THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2010 SKCA 26 Date: 20100225

Between: Docket: 1566

William Whatcott

Appellant (Appellant)

- and -

The Saskatchewan Human Rights Tribunal,
The Saskatchewan Human Rights Commission,
James Komar, Brendan Wallace, Guy Taylor and Kathy Hamre

Respondents (Respondents)

- and -

Attorney General for Saskatchewan

Intervener (Intervener)

- and -

Canadian Constitution Foundation
and Canadian Civil Liberties Association

Interveners

Coram:

Sherstobitoff, Smith and Hunter JJ.A.

Counsel:

Thomas A. Schuck for the Appellant
Janice E. Gingell for the Saskatchewan Human Rights Commission
J. Thomson Irvine for the Attorney General for Saskatchewan
John V. Carpay for the Canadian Constitution Foundation
Andrew K. Lokan for the Canadian Civil Liberties Association

Appeal:

From:		2007 SKQB 450
Heard:		September 19, 2008
Disposition:		Appeal Allowed
Written Reasons:		February 25, 2010
By:		
	(1)	The Honourable Madam Justice Hunter
In Concurrence:		The Honourable Mr. Justice Sherstobitoff
	(2)	The Honourable Madam Justice Smith
In Concurrence:		The Honourable Mr. Justice Sherstobitoff

Hunter J.A.

[1] William Whatcott ("Whatcott") distributed four flyers under the name of Christian Truth Activists. He placed them in mailboxes at various homes in Saskatoon and Regina in 2001 and 2002. Four persons who received these flyers at their home addresses filed complaints alleging the material in the flyers "promotes hatred against individuals because of their sexual orientation" and therefore violates s. 14(1)(b) of *The Saskatchewan Human Rights Code*[1] ("*Code*"). The Saskatchewan Human Rights Commission ("SHRC") appointed a human rights Tribunal ("Tribunal") to hear these complaints and it concluded Whatcott's four flyers contravened the *Code*. The appeal of the Tribunal decision was dismissed by the Court of Queen's Bench.

[2] Whatcott admits that the language he uses in his flyers is blunt and forthright, but contends he was exercising his right to freedom of expression and freedom of religion. Whatcott does not use the language of polite or informed social discourse. Many people would find some of the words he uses in his flyers to be crude, offensive and pejorative. The issue to be determined is whether his publications cross the boundary of freedom of expression and contravene s. 14(1)(b) of the *Code*.

[3] For the reasons that follow, I conclude that Whatcott's flyers did not violate s. 14(1)(b) of the *Code,* and his appeal should be allowed.

[1] S.S. 1979, c. S-24.1.

Background

[4] Whatcott prepared four flyers which were marked as Exhibits D, E, F and G at the Tribunal hearing and are attached as appendices to this judgment. Flyer D is entitled "Keep Homosexuality out of Saskatoon's Public Schools!" and the entire text of Flyer D follows:

> Keep Homosexuality out of Saskatoon's Public Schools!
>
> It has come to the attention of the Christian Truth Activists that a committee on "Gay, Lesbian, Bisexual and Transgendered issues," set up by the Saskatoon Public School Board had recommended that information on homosexuality be included in their curriculum and school libraries. The elementary school teacher's union in Ontario voted this year in favour of this for grades 3 and 4, even though children at this age are more interested in playing Barbie & Ken rather than learning how wonderful it is for two men to sodomize each other. Children in Ontario perform poorly in terms of academics, however, their teachers seem more interested in sexual politics of a perverted type, rather than preparing children to do well when they are older. Now the homosexuals want to share their filth and propaganda with Saskatchewan's children. They did it in Boston, under the guise of "Safe Schools" and their little sensitivity class degenerated into a filthy session where gay and lesbian teachers used dirty language to describe lesbian sex and sodomy to their teenage audience.*
>
> Christian Truth Activists believes that Sodomites and lesbians can be redeemed if they repent and ask Jesus Christ to come into their lives as Lord and Saviour. The Church of Jesus Christ is blessed with many ex-Sodomites and other types of sex addicts who have been able to break free of their sexual bondage and develop wholesome and healthy relationships. We also believe that for sodomites and lesbians who want to remain in their lifestyle and proselytize vulnerable young people that civil law should discriminate against them. In 1968 it was illegal to engage in homosexual acts, now it is almost becoming illegal to question any of their sick desires. Our children will pay the price in disease, death, abuse and ultimately eternal judgment if we do not say no to the sodomite desire to socialize your children into accepting something that is clearly wrong.
>
> Sincerely: Bill Whatcott
> Christian Truth Activists
> To contact us call: (306) 949-0818
> e-mail: jesus.w@accesscomm.ca

To let the public school authorities know that you don't want Saskatchewan's children corrupted by sodomite propaganda call the school board at:
306-683-8200 or fax at: 306-683-8207
Please call your local trustee as well to let them know they will be gone next election if they vote for implementing any homosexual propaganda in the children's curriculum.

**To find out what happened in Boston: phone (703)491-7975, or got (sic) to: http://www.americansfortruth.com/opening_remarks_by_peter_labarbe.htm*

[5] Flyer E is entitled "Sodomites in our Public Schools", with handwritten statements on either side of the photograph that say: "Break the Silence! Born Gay? No Way! Homosexual Sex is about risky & addictive behaviour!" and "Break the Silence! Sodomites are 430 times more likely to acquire Aids & 3 times more likely to sexually abuse children!" The entire text of Flyer E follows:

Sodomites in our Public Schools

[Photograph]

Toronto Gay Pride Parade, June. 2001

We should be holding conferences on how to reinstate Canada's sodomy laws! Not on how guys like this can be better accepted as your children's teachers. The Toronto Public School Board marches every year in this parade. If Saskatchewan's sodomites have their way, your school board will be celebrating buggery too!

Dear Friends:

The University of Saskatchewan is hosting the 5th annual "Breaking the Silence conference." Some of their workshops have titles like, "It's a drag doing drag in teacher education." Another workshop is named "Getting an Education in Edmonton, Alberta: The case for Queer Youth." Don't kid your selves; homosexuality is going to be taught to your children and it won't be the media stereotypes of two monogamous men holding hands.

The Bible is clear that homosexuality is an abomination. "Be no deceived neither fornicators, nor idolaters, or adulterers, nor sodomites will inherit the kingdom of heaven." 1 Cor 6:9. Romans 1 talks of women giving up natural relations for unnatural ones and men being inflamed in lust for other men. The behaviour in Canada's gay parades is no different than what has happened thousands of years a go, whether it is ancient Rome or Sodom and Gomorrah. Scripture records that Sodom and Gomorrah was given over completely to homosexual perversion and as a result destroyed by god's wrath. Rome also

> crumbled and many scholars attribute it's moral decadence and lack of discipline as playing a role in her demise.
>
> Canada in its quest for freedom from sexual restraint is following the path of ancient Rome. Our acceptance of homosexuality and our toleration of its promotion in our school system will lead to the early death and morbidity of many children. Ultimately our entire culture will be lost and we will incur the wrath of Almighty God if we do not repent. But there is still hope. We can repent and have our sins forgiven, "Come now, and let us reason together, says the Lord, Though your sins are as scarlet they shall be as white as snow; though they are as red as crimson, they shall be like wool," Isa 1:18. Even though conferences like Breaking the Silence refuse to acknowledge it, every year across North America, thousands of sodomites and lesbians find redemption and healing through the grace and mercy that is found by turning to Jesus Christ the Lord and giver of life.
> Sincerely: Bill Whatocott, Christian Truth Activists Phone: (306) 949-0818,
> Email jesus.w@accesscomm.ca
>
> *If the promotion of sodomy in your school system concerns you call: John Gormly and let him and ultimately all of Saskatchewan know: 1877-332-8255*

[6] Flyers F and G are identical, therefore only one flyer is attached as an appendix. These flyers are a reprint of a page of classified advertisements from a publication called "Perceptions Classifieds", with an address in Saskatoon. Two ads are circled or highlighted and printed by hand at the top in bold print is the phrase "Saskatchewan's largest gay magazine allows ads for men seeking boys!" In addition, there are two smaller hand-printed statements as follows:

> "If you cause one of these little ones to stumble it would be better that a millstone was tied around your neck and you were cast into the sea" Jesus Christ
>
> The ads with men advertising as bottoms are men who want to get sodomized. This shouldn't be legal in Saskatchewan!
>
> Bill Whatcott
> Christian Truth Activists
> 949-0818/jesus.w.accesscomm.ca

[7] Three of the complainants stated in their formal written complaints that the flyers delivered on April 8, 2002, in Regina and on March 15, 2002, in

Saskatoon, "promotes hatred against individuals because of their sexual orientation". Two of these three complainants did not attend or testify at the hearing.

[8] The fourth complainant, Guy Taylor, alleged that on September 9, 2001, in Saskatoon, Flyer D was delivered to his door and he framed his complaint as follows:

> … This material referred to gay, lesbian and transgender people as sick and predatory. I believe this material promotes hatred towards persons who are gay, lesbian or transgendered and is contrary to Section 14 of *The Saskatchewan Human Rights Code.*

[9] Two of the complainants, Guy Taylor and Brendan Wallace, testified at the hearing, and the SHRC presented D. Gens Hellquist to offer expert testimony. Whatcott testified and called Irwin Pudrycki, an ordained minister of the Lutheran Church of Canada, to offer expert testimony. The parties submitted an Agreed Statement of Facts and this, together with the above evidence, was applied to all four complaints before the Tribunal.

[10] The Tribunal stated that the issue before it was to determine if Flyers D, E, F, and G promote hatred within the meaning of s. 14 of the *Code*. In reviewing Flyer D the Tribunal isolated six phrases in the document and concluded:

> Turning to Schedule "D", I have no hesitation in concluding that the material contained therein can objectively be viewed as exposing homosexuals to hatred and ridicule. The combined references to:
>
> "children…learning how wonderful it is for two men to sodomize each other";
>
> "Now the homosexuals want to share their filth and propaganda with Saskatchewan's children";

> "degenerated into a filthy session where gay and lesbian teachers used dirty language to describe lesbian sex and sodomy to their teenage audience";
>
> "ex-Sodomites and other types of sex addicts who have been able to break free of their sexual bondage and develop wholesome and healthy relationships";
>
> "sodomites and lesbians who want to remain in their lifestyle and proselytize vulnerable young people that civil law should discriminate against them";
>
> "Our children will pay the price in disease, death, abuse…if we do not say no to the sodomite desire to socialize your children into accepting something that is clearly wrong"
>
> clearly exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts their dignity on the basis of their sexual orientation.[2]

[11] In Flyer E the Tribunal concluded that the combined references to seven phrases were considered to expose to hatred, ridicule, belittle, or otherwise affront their dignity based on sexual orientation:

> "Sodomites are 430 times more likely to acquire Aids and 3 times more likely to sexually abuse children!";
>
> "Born Gay? No Way! Homosexual sex is about risky and addictive behaviour!";
>
> "If Saskatchewan's sodomites have their way, your school board will be celebrating buggery too!";
>
> "Don't kid your selves; homosexuality is going to be taught to your children and it won't be the media stereotypes of two monogamous men holding hands.";
>
> "The Bible is clear that homosexuality is an abomination";
>
> "Sodom and Gomorrah was given over completely to homosexual perversion and as a result destroyed by God's wrath";
>
> "Our acceptance of homosexuality and our toleration of its promotion in our school system will lead to the early death and morbidity of many children";
>
> also exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts their dignity on the basis of their sexual orientation.[3]

[12] In Flyers F and G the Tribunal said the combined references to these two phrases:

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[2] Decision of the Saskatchewan Human Rights Tribunal dated May 2, 2005, at p. 12.
[3] *Ibid.* at pp. 12-13.

> "Saskatchewan's largest gay magazine allows ads for men seeking boys!";
>
> "If you cause one of these little ones to stumble it would be better that a millstone was tied around your neck and you were cast into the sea" …[4]

were considered to expose to hatred, ridicule, belittle or otherwise affront their dignity based on sexual orientation.

[13] The Tribunal adopted the reasons in *Saskatchewan (Human Rights Commission) v. Bell*[5] and the Queen's Bench decision in *Owens v. Human Rights Commission (Sask.)* (subsequently set aside by this Court),[6] and concluded that s. 14 of the *Code* was a reasonable restriction on Whatcott's s. 2(a) and (b) *Charter* rights to freedom of religion and freedom of expression. The Tribunal made an order prohibiting Whatcott:

> … from distributing the flyers listed in Schedules "D" to "G" of the Agreed Statement of Facts, or any similar material which promotes hatred against individuals because of the sexual orientation.[7]

[14] With respect to each of the complainants, the Tribunal awarded damages of one-half the maximum allowable limit provided for in the *Code* based on the following conclusions:

> Mr. Taylor who is gay, testified that he was hurt by the contents of the flyer. … He described the flyer as very offensive and so painful that it made him cry.
>
> Gens Hellquist felt that the materials listed in Schedules "D" to "G" had the potential to be very devastating on gays and lesbians, especially amongst the youth. They would particularly impact on one's self-esteem.
>
> … Whatcott to pay to Guy Taylor the sum of $2,500 as compensation for loss of his dignity and self-respect and hurt feelings.
>
> …

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[4] *Ibid.* at p. 13.
[5] (1994), 120 Sask. R. 122 (C.A.).
[6] 2002 SKQB 506, 228 Sask. R. 148, rev'd 2006 SKCA 41, 267 D.L.R. (4th) 733.
[7] *Supra* note 2 at p. 17.

> Brendan Wallace testified that he was angry and fearful as a result of receiving the flyer at his home. …
>
> In addition I take into account the testimony of Gens Hellquist on the general impact of the flyers in the gay and lesbian community. Finally I also take into account the wilful and reckless actions of William Whatcott in contravening s. 14 of the *Code* by distributing or causing the flyers to be distributed.
>
> … Whatcott to pay to Brendan Wallace the sum of $5,000 for his wilful and reckless actions in contravening s. 14 of the *Code* by distributing or causing the flyers to be distributed and as compensation for loss of Wallace's dignity, self-respect and hurt feelings.
>
> …
>
> Neither of these Complainants [James Komar and Kathy Hamre] was able to attend the hearing and provide evidence. … there is no direct evidence as to the specific impact of the flyers on these two Complainants. There is however the testimony of Gens Hellquist as to the general impact of the flyers in the gay and lesbian community. …
>
> …
>
> … Whatcott to pay to James Komar and Kathy Hamre, the sum of $5,000 each for his wilful and reckless actions in contravening s. 14 of the *Code* by distributing or causing the flyers to be distributed and as compensation for loss of their dignity, self-respect and hurt feelings.[8]

[15] Whatcott appealed the Tribunal decision to the Court of Queen's Bench. Whatcott's grounds of appeal included issues related to freedom of religion and freedom of speech and expression, and whether the Tribunal erred in law in the interpretation of the *Code*. First, the Queen's Bench judge noted that the Tribunal did not identify which portion of s. 14 of the *Code* was contravened. He stated:

> [9] … no evidence was led in relation to the flyers depriving, or tending to deprive, homosexuals of rights they were entitled to under law which could have led the Tribunal to conclude the flyers violated s. 14(1)(a) of the *Code*. At the human rights hearing the evidence put forth demonstrated how the flyers affected each of the complainants emotionally and expert evidence relating to

[8] *Ibid*. at pp. 16 and 17.

> discrimination against homosexuals, therefore, it is clear the Tribunal concluded the flyers violated s. 14(1)(b) as opposed to s. 14(1)(a) of the *Code*.[9]

[16] The Queen's Bench judge narrowed his decision to consider two issues: (i) whether the Tribunal erred in concluding the flyers conveyed hatred or otherwise contravened s.14(1)(b) of the *Code*; and (ii) whether s.14(1)(b) of the *Code* contravened the Appellant's freedom of religion pursuant to s. 2 of the *Charter*.

[17] Following the decision of this Court in *Owens,* the Queen's Bench judge concluded that the appropriate standard of review to be applied was the correctness standard. He then approached the question of the interpretation of s. 14(1)(b) of the *Code*. He concluded that to be contrary to the *Code*, the communication must be such that it "involves extreme feelings and strong emotions of detestation, calumny and vilification."[10] The Queen's Bench judge then considered whether each flyer individually was a publication of this sort and contrary to s. 14(1)(b) of the *Code*.

[18] In his consideration of Flyer D, the Queen's Bench judge stated:

> [22] Flyer [D] makes clear references to homosexuals as paedophiles or molesters of children. There is no other meaning which can be derived from alleging children will pay the price in abuse or that sodomites want to proselytize young children. The question then becomes whether alluding homosexuals are paedophiles amounts to conveying extreme feelings and strong emotions of detestation, calumny and vilification as required by *Owens, supra.*
>
> [23] There is no doubt paedophile and abuse of children is an action which Canadian society as a whole views as extremely vile and detestable. The Tribunal was correct in concluding Flyer [D] contravened s. 14(1)(b) of the *Code*.

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[9] 2007 SKQB 450, 306 Sask.R. 186.
[10] *Ibid.* at para. 21.

[19] The Queen's Bench judge's analysis and conclusion with respect to Flyer E is stated in the following paragraph:

> [24] Once again, Flyer [E] makes reference to homosexuals sexually abusing children. The hand written message at the top of Flyer [E] states homosexuals are three times more likely to abuse children. Granted this statement does not say all homosexuals sexually abuse children but it clearly infers the act is more prevalent in the homosexual community. The Tribunal was correct in concluding Flyer [E] exposed the homosexual community to hatred in the extreme sense contemplated by *Owen, supra.*

[20] In considering Flyers F and G, the Queen Bench judge's analysis and conclusion was stated in the following paragraph:

> [25] Flyers [F] and [G], in hand writing, say Saskatchewan's largest gay magazine allows ads for men seeking boys. The appellant was clearly referring to boys as young children. Once again, the flyers distributed by the appellant make reference to homosexuals as a group that sexually desires and abuses young children. The Tribunal was correct in concluding the distribution of Flyers [F] and [G] amounted a contravention of s. 14(1)(b) of the *Code*. …

[21] In reference to the religious content of the four flyers, the Queen's Bench judge stated:

> [26] All of the flyers distributed by the appellant had religious references included. These religious references refer to homosexuality as a sin. None of the biblical references were directly related to the allusion made in the flyers that homosexual people sexually abuse children. Although the Tribunal decision was unclear in what weight, if any, the biblical references carried in their conclusion the point is mute (*sic*). The references in all the flyers to homosexuals, as a group, sexually molesting children were not connected to the biblical aspects of the flyer in any logical manner. The flyers contravene s. 14(1)(b) because of these references and not their religious contents or opinion.

[22] The Queen's Bench judge concluded that *Owens* is authority for the proposition that s. 14(1)(b) is a justifiable limit on religious speech[11] under s. 2 of the *Charter* and dismissed the appeal.

Legislation

[23] The appeal before us involves the interpretation and application of the *Code*. In *Human Rights Commission (Sask.) v. Engineering Students' Society, University of Saskatchewan*,[12] Cameron J.A., briefly describes the evolution of the *Code*. For our purposes it is sufficient to note that in Saskatchewan the first legislation enacted to protect freedom of speech and freedom of religion was *The Saskatchewan Bill of Rights Act* ("*Bill of Rights*").[13]

[24] Sections 4 to 8 of the *Code* include the fundamental rights previously found in the *Bill of Rights* and include the right to freedom of conscience and free expression. The *Code* sections relevant to our case are:

> **4** Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.
>
> **5** Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.

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[11] *Ibid.* at para. 28.
[12] (1989), 72 Sask. R. 161. For a useful discussion of the evolution of legislation and comment on court decisions up to 2004, see: Luke McNamara, "Negotiating the Contours of Unlawful Hate Speech: Regulation Under Provincial Human Rights Laws in Canada" (2005) 38 U.B.C. L. Rev. 1.
[13] S.S. 1947, c. 35, as rep. by *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1.

[25] The *Code* lists the prohibited grounds of discrimination in s. 2(1)(m.01). The prohibited ground we are concerned with here is s. 2(1)(m.01)(vi), "sexual orientation".

[26] Part II of the *Code* prohibits discriminatory practices on the basis of any of the defined prohibited grounds in s. 2(1)(m.01). The prohibited practice that concerns us is s. 14 entitled "Prohibitions against publications" and, at all times material to this case reads:

> **14**(1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation:
>
> > (a) tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons, on the basis of a prohibited ground, of any right to which that person or class of persons is entitled under law; or
> >
> > (b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.
>
> (2) Nothing in subsection (1) restricts the right to freedom of expression under the law upon any subject.

[27] The *Code* is administered by the SHRC appointed pursuant to the *Code*. All appropriate procedures were followed. The Tribunal has the authority to make orders under the *Code* and such orders shall be enforced as a judgment of the Court of Queen's Bench. Any decision or order is subject to appeal as provided in s. 32 of the *Code*:

> **32**(1) Any party to a proceeding before a human rights tribunal may appeal on a question of law from the decision or order of the human rights tribunal to a judge of the Court of Queen's Bench …
>
> …

> (3) The minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.
>
> (4) Where an appeal is taken under this section, the judge shall determine any question of law relating to the appeal and may affirm or reverse the decision or order of the human rights tribunal or remit the matter back to the human rights tribunal for amendment of its decision or order.
>
> (5) The decision of the Court of Queen's Bench may be appealed to the Court of Appeal.

Position of the Parties

[28] Whatcott disputes that Flyers D, E, F and G objectively meet the tests set out in *Owens* and *Canada (Human Rights Commission) v. Taylor*.[14] He argues that there is no violation of the *Code*. Alternatively, he contends that if the material exhibits hate, it is directed toward sexual behaviour, which is not a prohibited ground in the *Code*. Lastly, if sexual behaviour is a prohibited ground under the *Code*, he argues that it is overbroad and conflicts with s. 4 of the *Code* and his s. 2 *Charter* right to freedom of religion. Therefore, pursuant to s. 44 of the *Code*, if criticism of sexual behaviour is considered to be a prohibited ground within the meaning of sexual orientation, then it should be inoperative as it conflicts with ss. 4 and 5 of the *Code*.

[29] Whatcott argues that the Tribunal and the Queen's Bench judge failed to consider the context in which the comments were made in Flyers D and E. He submits that an objective reading of Flyer D would lead to the conclusion that he objected to any discussion related to homosexuality being part of the public school curriculum. As for Flyer E, he objected to conferences sponsored by the University and in particular to students in the College of

[14] [1990] 3 S.C.R. 892.

Education, which he believed would lead to teaching same sex activities as morally neutral in the school system.

[30] Whatcott argues that by characterizing his statements as discriminatory, the Court permitted a government agency to censor his speech and effectively end his participation in a public debate on a matter of public interest.

[31] The SHRC submits this case concerns the balancing of rights in society and the protections afforded to discrete groups and asks this Court to affirm the right to be free from messages of hatred based on sexual orientation, even when expressed through the words of religious text or presented in the guise of debate. SHRC takes the position that to find a breach of s. 14(1)(b) requires a high degree of hatred, based on discrimination against an enumerated ground. It contends that Whatcott's materials exhibit hate and are aimed at an identifiable group of people, discriminating based on their sexual orientation.

[32] Further, SHRC contends that s. 14(1)(b) was upheld as constitutionally valid, therefore, the consequent infringement of the freedoms of religion and of expression have already been determined to be a justifiable limit under s. 1 of the *Charter*. Accordingly, s. 14(1)(b) of the *Code* is a reasonable limitation of ss. 4 and 5 of the *Code* and s. 2 of the *Charter*, freedom of expression and freedom of religion.

[33] SHRC agrees with Whatcott that sexual behaviour is not an enumerated ground protected by the *Code*. SHRC identifies four issues to be determined in this appeal. The first issue, which all agree is assesed on the correctness

standard of review, is whether the Queen's Bench judge erred in concluding Flyers D, E, F and G violated s. 14(1)(b). If the answer is yes, that would be the end of the matter. However, if the Queen's Bench judge's decision is correct, then it is necessary to address the following issues: (i) is s. 14(1)(b) of the *Code* a reasonable infringement on the freedoms of expression and religion; (ii) is the Tribunal order a reasonable infringement of Whatcott's freedoms of expression and religion; and (iii) did the Tribunal commit a reversible error in determining the award of remedies against Whatcott?

[34] The Attorney General is concerned with only two issues: (i) the constitutionality of s. 14(1)(b); and (ii) the relationship between s. 14(1)(b) of the *Code* and the *Charter*.

[35] The first intervenor, Canadian Civil Liberties Association ("CCLA"), advocates for a robust protection for freedom of expression. While it does not condone Whatcott's use of strong language, it takes the position that it is fundamental to democracy that individuals be able to comment on the morality of others' behaviour and that norms of behaviour must be debatable. It is in this way and through democratic processes that people reach their own conclusions as to what behaviours should be permitted, encouraged, discouraged, or forbidden.

[36] Further, it asserts that the manner in which children in the public school system are exposed to messages about different forms of sexuality and sexual identity is inherently controversial and must always be open to public debate. Their counsel writes:

> [8] … Neither those who believe homosexuality is sinful, nor those who promote acceptance and tolerance on LGBT issues, can be permitted a monopoly in this debate.
>
> [9] … In a robust democracy, we must have a high degree of tolerance for debates about moral issues, even when expressed in polemical terms, provided the speaker does not engage in violence, incitement to violence, or threats.[15]

It contends the words used in the flyers, while repugnant, ought to be legally permissible if one is committed to freedom of expression. Further, it contends that if any provision in legislation or any order made by the Tribunal has the effect of prohibiting debate on the morality of behaviour, this represents a serious and unwarranted incursion into freedom of expression and religion.

[37] The second intervener, Canadian Constitution Foundation ("CCF"), supports the right of citizens to peacefully express their religious and political opinions on matters of public policy and argues that this leads to the issue of how to interpret s. 14 of the *Code*. CCF characterizes the content of the flyers as: (i) conveying disapproval of homosexual behaviour; (ii) opposing the teaching of homosexuality to children in schools; and (iii) criticizing a gay magazine for its advertising practices. It argues these are expressions of Whatcott's religious and political views on questions of public debate.

[38] CCF supports the fundamental right to freedom of expression and a citizen's freedom of conscience and religion. In its view both rights are to be given a broad interpretation and a robust application. It agrees that, on subjects concerning moral issues, emotions can run high.

[15] Factum of the Intervenor, Canadian Civil Liberties Association.

Analysis

[39] Section 14 of the *Code* has been considered by this Court only a few times since 1979. It was considered in *Engineering Students' Society,*[16] *Bell*[17] and *Owens*.[18]

[40] As stated in *Owens,* the first principle is that there is no deference accorded to the Tribunal conclusions:

> [37] … notions of "hatred," "ridicule," "belittlement" and "affronts to dignity" are the key legal concepts in s. 14(1)(b) itself and … are ultimately given meaning by a relatively complex set of constitutional considerations. …

Further, the statutory regime in the *Code,* in s. 32, allows an appeal to the Court of Queen's Bench only on a question of law. It follows that the same standard applies to a further appeal to this Court pursuant to s. 32(5). Accordingly, it is the correctness standard that will be applied in this case.

[41] The first issue to be addressed is whether the Tribunal and the Court below correctly approached their task in determining whether the content of Whatcott's flyers contravened s. 14(1)(b) of the *Code.*

[42] Section 14(1)(b) of the *Code* is a clear limitation on freedom of expression. An analysis of whether this section has been contravened must include a discussion of *Taylor*. In *Taylor,* the Supreme Court of Canada was concerned with the interpretation of s. 13 of the *Canadian Human Rights Act*[19] *("CHRA"),* which is similar, but not identical, to s. 14(1) of the *Code*. In

[16] *Supra* note 12.
[17] *Supra* note 5.
[18] *Supra* note 6.
[19] R.S.C. 1985, c. H-6.

Taylor, the Court determined the meaning of hatred as it is to be applied to expressions which are alleged to breach s. 13 of the *CHRA*.

[43] Dickson C.J., writing for the majority, applied to s. 13 of the *CHRA* the same high standard set out in *R. v. Keegstra*[20] that hatred is limited to only the most severe and deeply felt opprobrium. In respect of human rights legislation, he said the applicable standard would be hatred expressing "unusually strong and deep-felt emotions of detestation, calumny and vilification."[21]

> In defining "hatred" the Tribunal [in *Taylor*] applied the definition in the *Oxford English Dictionary* (1971 ed.) which reads:
>
> active dislike, detestation, enmity, ill-will, malevolence.
>
> …
>
> As there is no definition of "hatred" or "contempt" within the [*Canadian Human Rights Act*] it is necessary to rely on what might be described as common understandings of the meaning of these terms. Clearly these are terms which have a potentially emotive content and how they are related to particular factual contexts by different individuals will vary. …
>
> …
>
> In sum, the language employed in s. 13(1) of the *Canadian Human Rights Act* extends only to that expression giving rise to the evil sought to be eradicated and provides a standard of conduct sufficiently precise to prevent the unacceptable chilling of expressive activity. Moreover, as long as the Human Rights Tribunal continues to be well aware of the purpose of s. 13(1) and pays heed to the ardent and extreme nature of feeling described in the phrase "hatred or contempt", there is little danger that subjective opinion as to offensiveness will supplant the proper meaning of the section.[22]

[20] [1990] 3 S.C.R. 697.
[21] *Supra* note 14 at p. 928.
[22] *Ibid*. at pp. 927-29.

[44] In *Taylor* the Court upheld the constitutional validity of s. 13 of the *CHRA*. As noted in *Owens*, the test in *Taylor* makes it clear that for a limitation on free speech to withstand *Charter* scrutiny:

> [49] … s. 13(1) must be read as being aimed only at expression involving feelings of an "ardent and extreme nature" and, in particular, "unusually strong and deep-felt emotions of detestation, calumny and vilification."

Accordingly, the bar is set very high.

[45] Further, as stated in *Taylor*, a s. 1 *Charter* analysis "requires an approach sensitive to the context of a given case"[23] and "an appreciation of the extent to which a restriction of the activity at issue on the facts of the particular case debilitates or compromises the principles underlying the broad guarantee of freedom of expression".[24] Most importantly, it must be "extreme feelings of opprobrium and enmity against a racial or religious group",[25] *i.e.*, speech in its most extreme form.

[46] Prior to the decision in *Taylor*, this Court considered s. 14 of the *Code* in 1989 in *Engineering Students' Society*.[26] While Cameron J.A., writing for the majority, ultimately dismissed the appeal of the SHRC, he examined the object and scheme of the *Code* and its structure, which is applicable here and are adopted as part of this judgment.[27]

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[23] *Ibid.* at p. 916.
[24] *Ibid.* at p. 922.
[25] *Ibid.* at p. 902.
[26] *Supra* note 12.
[27] *Ibid.* at paras. 45-48.

[47] This Court next considered s. 14(1) of the *Code* in *Bell*.[28] The issue before the Court was the constitutional validity of s. 14 of the *Code*. Bell ran a motorcycle parts business and he also offered for sale stickers depicting caricatures of persons of East Indian, Oriental and Black ethnicity. Each sticker carried a not allowed symbol. The SHRC applied for an injunction to prohibit Bell from selling the stickers. This Court concluded it was bound by *Taylor* and therefore s. 14(1) of the *Code* was a reasonable limit on freedom of expression under s. 1 of the *Charter*.

[48] *Bell* is important to the manner in which this case should have been dealt with insofar as it confirms that s. 14 of the *Code* must be read in the context of the object and scheme of the *Code*, and adopts significant paragraphs of the *Engineering Students' Society* case:

> [17] Section 14 must, of course, be read in the context of the object and scheme of the *Code*, as well as the evolution, nature, purpose, structure and test of the section itself. All of this context was examined in detail by Cameron J.A., of this court, writing for the majority in Human Rights Commission (Sask.) v. Engineering Students' Society (1989), 72 Sask. R. 161. The portions of his judgment which bear directly upon this case are paras. [28] to [57], [59] to [62], and [79] to [81] and are adopted as a part of this judgment. …

[49] In *Bell*, the Court discussed the effect of s. 2(b) of the *Charter* and the implications for s. 14(1)(b) of the *Code* and stated:

> [26] … For our purposes, s. 2(b) protects all content of expression irrespective of its meaning with the sole exception of expression conveyed in physically violent form. Any government action of which the purpose is to restrict freedom of expression will necessarily infringe s. 2(b). … In this case all parties agreed that the expression dealt with in s. 14 of the *Code* was protected by s. 2(b) of the *Charter*, and that the only issue was whether s. 14 was a reasonable limit on the right to freedom of expression within the meaning of s. 1 of the *Charter*.
>
> …

[28] *Supra* note 5.

> [29] Insofar as s. 14 prohibits display of material exposing or tending to expose to hatred because of race or religion, it is unquestionably a reasonable limit for all of the reasons stated … in *Taylor*. We are bound by those reasons …

In the result, *Bell* concluded that s. 14(1) of the *Code* is constitutionally valid and confirmed and adopted the definition of hatred in *Taylor*.

[50] Twelve years elapsed before this Court in *Owens*[29] considered a breach of s. 14(1)(b) of the *Code*. Owens ran an ad in the Saskatoon *StarPhoenix* consisting of four biblical quotations dealing with the sexual practices of persons of the same sex, followed by a not permitted sign superimposed over two stickmen holding hands. The Human Rights Tribunal found that the advertisement contravened s. 14(1)(b) of the *Code* on the basis of their sexual orientation. The decision of the Tribunal was affirmed in the Court of Queen's Bench.

[51] In *Owens*, the Court concluded that s. 14(1)(b) of the *Code* is aimed directly at expressive activity and therefore constrains free speech and limits constitutionally protected religious interests, including the right to disseminate belief, but recognized that any limitation must meet the very high standard of hatred described in *Taylor* and adopted in *Bell* and stated:

> [52] Thus, while *Bell* upheld s. 14(1)(b) of the *Code* as being a reasonable limit on freedom of expression, it did so on a very particular basis. The Court saw s. 14(1)(b) as operating only in those situations where the "ridicule", "belittlement" or "affront to dignity" in issue met the standard endorsed in *Taylor*. In other words, the Court interpreted the prohibition against ridicule, belittlement and affronts to dignity as extending only to communications of that sort which involve extreme feelings and strong emotions of detestation, calumny and vilification.
>
> [53] No other result, of course, could be justifiable. Much speech which is self-evidently constitutionally protected involves some measure of ridicule, belittlement or an affront to dignity grounded in characteristics like race, religion

[29] *Supra* note 6.

> and so forth. I have in mind, by way of general illustration, the editorial cartoon which satirizes people from a particular country, the magazine piece which criticizes the social policy agenda of a religious group and so forth. Freedom of speech in a healthy and robust democracy must make space for that kind of discourse and the *Code* should not be read as being inconsistent with that imperative. Section 14(1)(b) is concerned only with speech which is genuinely extreme in the sense contemplated by the *Taylor* and *Bell* decisions.

[52] The *Charter* in s. 2(a) and (b) guarantees freedom of religion and freedom of expression. In *Owens*, the Court observed that freedom of religion and freedom of expression are also enshrined as fundamental rights in ss. 4 and 5 of the *Code*. In addition, s. 14(2) of the *Code* provides that "[n]othing in subsection (1) restricts the right to freedom of expression under the law upon any subject". Because the *Charter* and the *Code* both provide for the freedoms of expression and religion, it necessitates that one must carefully consider speech and religion when interpreting s. 14(1)(b) of the *Code*. The Court stated:

> [44] All of this means freedom of speech and religion must be carefully considered when interpreting s. 14(1)(b). First, as the Supreme Court noted in *R. v. Zundel*, [1992] 2 S.C.R. 731 at p. 771, when a statute is susceptible of alternative interpretations, the one which accords with the *Charter* and the values to which it gives expression should be preferred. Second, as a matter of pure statutory interpretation, s. 14(1)(b) must be read in the context of the *Code* as a whole and, to the extent reasonably possible, given a construction which is consistent with an overall legislative scheme which respects and guarantees freedom of speech and religion. See: *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at p. 41.

[53] In *Owens*, the Court examined *Taylor* with respect to the interpretation of s. 14(1)(b) of the *Code*. In *Taylor* the Court defined hatred and contempt and importantly issued this warning that tribunals should be careful that their subjective opinion as to offensiveness does not supplant the proper meaning of s. 13 of the *CHRA*. Aware of the significance of this warning against

subjective opinion, the Court, in *Owens*, amplified this concern in respect of the interpretation of s. 14 of the *Code*:

> [58] … the question of how a particular individual … understand a message cannot determine whether it should be found to involve hate …. Injecting that sort of subjectivity into the analysis would make the reach of the section entirely unpredictable and, as a result, would create an unacceptable chilling effect on free speech.
>
> [59] Similarly, the perspective of the person who sends a message cannot control the outcome of the inquiry …. He or she might have a sense of the meaning of the message which, because of prejudice or otherwise, is wholly inconsistent with its actual effect. Focusing on the subjective views of the person alleged to have offended s. 14(1)(b) thus runs the risk of making that provision inapplicable to even the most offensive and dangerous messages and, consequently, of defeating its purpose.
>
> [60] As a result, it is apparent that s. 14(1)(b) must be applied using an objective approach. The question is whether, when considered objectively by a reasonable person aware of the relevant context and circumstances, the speech in question would be understood as exposing or tending to expose members of the target group to hatred or as ridiculing, belittling or affronting their dignity within the restricted meaning of those terms as prescribed by *Bell*.
>
> …
>
> [63] That question can be answered only by considering the contents of the advertisement as a whole in light of the circumstances in which it was published. Context is critically important in this regard. The analysis pursuant to s. 14(1)(b) of the *Code* must be performed carefully and always on a case-by-case basis

[54] In *Owens*, the Court, after setting out the wider context, observed that both the Tribunal and Chambers judge failed to consider this wider context and thereafter concluded that the publication of the advertisement, properly considered in its full context, did not offend s. 14(1)(b) of the *Code* and allowed the appeal.[30]

[55] In sum, neither the perspective of the person who sends the message, nor the sensibilities of the person who may be the target of the message, has a part

[30] *Ibid*. at para. 88.

to play in determining the effect of the message. The utilization of a subjective approach would either "create an unacceptable chilling effect on free speech"[31] or make the provision "inapplicable to even the most offensive and dangerous messages and, consequently, of defeating its purpose".[32] An objective approach is to be followed. The key to an objective examination of the offending material is to consider the message in context, *i.e.*, after giving careful consideration to the situations and conditions in which the message was delivered.

[56] Fundamental freedoms are protected in Part I of the *Code* and the prohibitions against discrimination are contained in Part II of the *Code*. It is s. 5 of the *Code* that expresses the intent of the Legislature to protect freedom of expression.[33] In s. 14(2) of the *Code*,[34] the Legislature reinforces that freedom of expression must not be ignored when considering an allegation that a publication is a breach of s. 14(1) of the *Code*.

[57] Because freedom of expression is protected in s. 5 of the *Code*, with a further reminder in s. 14(2), there can be little doubt but that the Legislature intended there to be a balancing of the conflict between the protected freedom of expression and the prohibitions against publications. This conflict was recognized in *Owens*.[35] While some may argue this reading of s. 14(2) of the *Code* over-emphasizes the right to freedom of expression, it is consistent with

[31] *Ibid.* at para. 58.
[32] *Ibid*. at para. 59.
[33] See para. 23 of this judgment.
[34] See para. 55 of this judgment.
[35] *Supra* note 6 at para. 53.

the general principles of statutory interpretation. It should be remembered that:

> …it is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain …

and that:

> … every word and provision found in a statute is supposed to have a meaning and a function. For this reason courts should avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant.[36]

[58] Sherstobitoff J.A. writing in *Bell*,[37] noted that Dickson C.J. in *Taylor* said, in reference to this type of provision:

> [32] This reasoning is reinforced by the fact that s. 14 of the *Code* is tempered by interpretative and exemption provisions which were absent in the legislation under consideration in *Taylor*. Subsection (2) of s. 14 provides:
>
> > "(2) Nothing in subsection (1) restricts the right to freedom of speech under the law upon any subject."
>
> Section 5 provides:
>
> > "5. Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device."
>
> Such provisions are normal in human rights legislation and Dickson, C.J., said as follows in reference to such provisions at p. 930:
>
> > "Perhaps the so-called exemptions found in many human rights statutes are best seen as indicating to human rights tribunals the necessity of balancing the objective of eradicating discrimination with the need to protect free expression (see, e.g. *Rasheed v. Bramhill* (1980), 2 C.H.R.R. D/252)."

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[36] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008) at p. 210, referencing *The Attorney General of the Province of Quebec v. Carrières Ste.-Thérèse Ltée,* [1985] 1 S.C.R. 831; and *Communities Economic Development Fund v. Canadian Pickles Corp.*, [1991] 3 S.C.R. 388. See also: Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994) at p. 159, "The Presumption Against Tautology".

[37] *Supra* note 5.

[59] The protection provided to freedom of expression found in the *Code*, has been in the legislation of this province since 1947. McLachlin J., as she then was, writing for the minority in *Keegstra*, noted that freedom of expression in Canada was not created by the *Charter*. She reviewed a number of pre-*Charter* decisions and concluded:

> Nevertheless, one thing has remained constant through all the decisions. That is the recognition that freedom of speech is a fundamental Canadian value.[38]

McLachlin J. later noted that post-*Charter* cases have confirmed that the roots of freedom of expression pre-date the *Charter*:

> Freedom of speech and the press had acquired quasi-constitutional status well before the adoption of the *Charter* in 1982. In a series of cases dealing with legislation passed by repressive provincial regimes, the Supreme Court endorsed the proposition that the right to express political ideas could not be trammelled by the legislatures: see *MacKay*, op. cit., at pp. 715-16.
>
> …
>
> The enactment of s. 2(b) of the *Charter* represented both the continuity of these traditions, and a new flourishing of the importance of freedom of expression in Canadian society. As Professor MacKay has stated, op. cit., at p. 714:
>
> > Freedom of expression was not invented by the Charter of Rights and Freedoms but it has acquired new dimensions as a consequence of its entrenchment.
>
> Continuity has been stressed in cases such as *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573. McIntyre J., at p. 583, recognized both the deep roots of freedom of expression in Canadian society, and the key role it has played in our democratic development:
>
> > Freedom of expression is not, however, a creature of the *Charter*. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society. Representative democracy, as we know it today, which is in great part the product of free expression and discussion of varying ideas, depends upon its maintenance and protection.[39]

[38] *Supr*a note 20 at p. 809.
[39] *Ibid*. at pp. 808-10.

[60] While freedom of expression is protected under the *Code*, it is not an absolute right. The Legislature, in s. 14(1)(b), has set out a limit on an individual's freedom of expression. If one views it as a continuum of expression, the task is to find the point on the continuum where the expression in question, which has been directed at a person or group of persons on a prohibited ground, is of significant emotion that it exposes or tends to expose them to hatred. The test established in *Bell* is a useful principle and must be used as part of the inquiry when balancing s. 14(1)(b) rights with the s. 14(2) rights. However, the most significant principle to be utilized in this exercise is a determination of the context in which the publication is made.

[61] Even though freedom of expression is a fundamental concept, in my view, the *Code* requires a balancing between protecting the freedom of expression and the right to limit expression in publications in reference to groups of persons listed in the prohibited grounds in the *Code*. In this case, Whatcott's right to freedom of expression is in conflict with persons, who on the basis of their sexual orientation, complain the content of his flyers expose or tend to expose them to hatred.

[62] Context is of particular importance when considering complaints based on sexual orientation and the impact on freedom of expression. Most often, underlying these complaints are issues relating to matters of morality. It is acceptable, in a democracy, for individuals to comment on the morality of another's behaviour. For this reason there will be a relatively high degree of tolerance for the language used in debates about moral issues, subject, of

course, to limitations. Anything that limits debate on the morality of behaviour is an intrusion on the right to freedom of expression.

[63] *Owens* addresses the conflict between gay and lesbian persons and their right to be free from hateful expression directed at them as a consequence of their sexual orientation, and the right to freedom of expression protected by s. 14(2) for persons who on a moral basis criticize the sexual practices of gays and lesbians. In respect of the intersection of sexuality and sexual practices, and the right of persons to disapprove of practices without disapproving of the practitioners themselves, Richards J.A. stated:

> [82] … Sexuality and sexual practices are such intimately central aspects of an individual's identity that it is artificial to suggest that the practices of gays and lesbians in this regard can somehow be separated out from those individuals themselves. However, in the present circumstances, it is necessary to recognize that many people do make such a distinction and believe on moral or religious grounds that they can disapprove of the same-sex sexual practices without disapproving of gays and lesbians themselves. This fact is at least part of the overall context in which Mr. Owens' advertisement must be considered. Again this tends to shade the content of the advertisement away from it being the sort of message which falls within the scope of s. 14(1)(b) of the *Code*.

[64] There may never be an end to this debate as long as there are people who, as part of their belief or value system (whether religious or otherwise), disapprove of same-sex sexual practices. An examination of context is critically important in managing this debate.

[65] Further, when words and phrases in publications are examined in this context, *i.e.*, in this particular debate on morality, the expressions must meet the *Taylor* test for hatred as prescribed in *Bell* and must be clear on the face of the publication, without resort to conjecture and speculation.

[66] Any publication which is the basis for a complaint under s. 14(1)(b) of the *Code*, must be analyzed in accordance with the structure of the *Code* and the principles established in *Bell* and *Owens*. This means, in this case, each of the flyers must be examined in context and the circumstances in which the publication was made and distributed. When assessing the severity of the language in the publication, the language used in the flyers must be examined objectively, having regard to the context and the circumstances in which it is presented. Throughout this examination, care must be taken to balance the limitation to freedom of expression contained in s. 14(1)(b), with the confirmation provided in s. 14(2), that nothing in s. 14(1)(b) "restricts the right to freedom of expression under the law upon any subject".

[67] For the reasons that follow, I conclude both the Tribunal and the Queen's Bench judge failed to apply these principles when analyzing the publications distributed by Whatcott and that are in issue in this case. I now turn to an examination of the flyers distributed by Whatcott.

Schedule D

[68] The Tribunal selected six phrases out of two paragraphs of text.[40] The Tribunal stated that it must find that it exposes or tends to expose to hatred as defined in *Bell*. The Tribunal failed to describe why these words or phrases, alone or in combination, met the definition of hatred of detestation, calumny and vilification. This list of the above words and phrases were taken out of the context of the sentences or paragraphs in which they were stated in the flyer

[40] See para. 10 of this judgment.

and then, without any analysis, the Tribunal said it had "… no hesitation in concluding that the material contained therein can objectively be viewed as exposing homosexuals to hatred and ridicule."[41] To apply an objective test requires more than a conclusion that purports to have been arrived at objectively.

[69] The Queen's Bench judge took only portions of two of the phrases: alleging children will pay the price in abuse and that sodomites want to proselytize vulnerable young people, and interpreted young people to mean children and concluded that these phrases are "clear references to homosexuals as paedophiles or molesters of children".[42] The judge then said that "[t]here is no doubt paedophile and abuse of children is an action which Canadian society as a whole views as extremely vile and detestable".[43] On this basis he concludes; first, that these two phrases meant that homosexuals are child molesters and given this, second, these phrases conveyed feelings of detestation towards homosexuals.

[70] In undertaking an analysis of Flyer D, neither the Tribunal nor the Queen's Bench judge considered the context in which these statements were made and what prompted this flyer. Nor was there any attempt to balance the protection for freedom of expression in s. 14(2) with the limitation in s. 14(1)(b).

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[41] *Supra* note 2 at p. 12.
[42] *Supra* note 9 at para. 22.
[43] *Ibid.* at para. 23.

[71] The heading of the flyer says, “Keep Homosexuality out of Saskatoon’s Public Schools!” In the text it states that:

> … a committee on “Gay, Lesbian, Bisexual and Transgendered issues,” set up by the Saskatoon Public School Board has recommended that information on homosexuality be included in their curriculum and school libraries. …

The first full paragraph of Flyer D refers to these issues in the context of the public school curriculum. The second paragraph outlines various statements of what some would frame as “religious beliefs” of a group called Christian Truth Activists. The flyer concludes with phone numbers for the Saskatoon School Board and Whatcott’s suggestion that if one was concerned you could telephone the school board. I find that the Schedule D flyer was distributed in the context of a concern expressed by Whatcott in the flyer about the consideration being given by the Saskatoon Public School Board’s recommendation that information on homosexuality be included in the curriculum and school libraries.

[72] Some of the words and phrases used by Whatcott are crude and harsh. His flyer is not written eloquently, nor does it philosophize about the role of morality in a liberal democratic state. The writing does not have to meet a certain standard to be protected under the *Code*. The task for the Tribunal and the Court is to balance the conflicting rights found in s. 14(1)(b) and 14(2).

[73] Some of the words and phrases taken in isolation are demeaning. It is not enough that particular words or phrases may be considered to meet the standard established in *Taylor* for “hatred” of calumny, detestation and vilification. It is doubtful if any of the words and phrases isolated by the Tribunal or the Queen’s Bench judge would, standing alone, meet the test set

out in *Taylor* for hatred, *i.e.*, detestation, calumny and vilification. Moreover, when examined in the context of a debate about the actions of the Saskatoon School Board, the entire flyer would not be seen by a reasonable person as communicating the level of emotion required to expose persons on the basis of their sexual orientation to a level of hatred within the meaning of that term as prescribed in *Bell*.

[74] To use the derogatory form of a word is not by itself hatred. Many in Canadian society would find it offensive, may refrain from using such a word and not associate with persons who use the word. In balancing the right of freedom of expression against the limitation contained in s. 14(1)(b) of the *Code*, one must not seize on a word or phrase in isolation and censor persons who use the offensive form of a word or phrase in a publication. There, of course, will be circumstances in which a word or phrase in another context, or without any context, may well breach s. 14(1)(b) of the *Code*. This does not give a license to use such words or phrases, but neither is it obviously hatred within the meaning of s. 14(1)(b) of the Code.

[75] In my view, the conclusions of both the Tribunal and the Queen's Bench judge exhibit the danger that censorship can occur if the above principles are not utilized. In the result, applying these principles, I conclude that Flyer D is protected by the freedom of expression in s. 14(2) and does not meet the test for hatred in s. 14(1)(b) as prescribed in *Bell*.

Schedule E

[76] In examining Flyer E, the Tribunal held the combined references to seven phrases, used within the flyer, were a breach of s. 14(1)(b) of the *Code*.[44]

[77] The Queen's Bench judge took one handwritten statement at the top of the flyer and concluded that this was sufficient to declare that the publication was in breach in s. 14(1)(b) of the *Code* when he said:

> [24] . . . Flyer [E] makes reference to homosexuals sexually abusing children. The hand written message at the top of Flyer [E] states homosexuals are three times more likely to abuse children. Granted this statement does not say all homosexuals sexually abuse children but it clearly infers the act is more prevalent in the homosexual community.

[78] The same approach is to be utilized in examining Schedule E as with Schedule D. The flyer must be viewed in the entire context considering the circumstances in which it is written. When one does so, the initial sentence points to the fact that the University of Saskatchewan was hosting a conference called "Breaking the Silence", which contained workshops having titles like, "It's a drag doing drag in teacher education" and "Getting an Education in Edmonton, Alberta: The case for Queer Youth". In the text of the flyer, Whatcott raises the issue about homosexuality being taught in the public schools. In my view, reading the entire flyer objectively leads to the conclusion that it is part of an ongoing debate about teaching about homosexuality in public schools.

[79] I am of the view that only one phrase requires comment. The handwritten phrase at the top of Flyer E says: "Sodomites are 430 times more likely to acquire Aids & 3 times more likely to sexually abuse children!"

[44] *Supra* note 2 at pp. 12 and 13.

Viewed in the entire context of the publication, this phrase does not contribute to the debate about what is being taught at the university nor can it be attributed to any larger debate about morality. There is nothing on the face of the document which states any valid source for this statement. This phrase is most likely an hyperbole meant to draw attention to the publication. However, even if construed as a smear against homosexuals, the question is whether a single phrase taints the entire publication and tips the balance in favour of limiting free expression so that it has the effect of censoring the entire publication. In my view, the use of this one phrase does not change the overall effect of the flyer.

[80] I conclude that Flyer E, viewed in the context and circumstances it was distributed, and applying the test prescribed in *Bell*, is not a prohibited publication within the meaning s. 14(1)(b) of the *Code*.

Schedules F and G

[81] The two Flyers F and G are identical. They are a reprint of a page of a classified advertisement from a publication called "Perceptions". Some of the words in two advertisements were highlighted and three statements were handwritten at the top. The Tribunal isolated two of the handwritten statements "Saskatchewan's largest gay magazine allows ads for men seeking boys!" and "If you cause one of these little ones to stumble it would be better that a millstone was tied around your neck and you were cast into the sea" Jesus Christ." [45] Without more, the Tribunal concluded that the combined reference to these two phrases resulted in the flyers being in breach of s.

[45] See para. 6 of this judgment and Appendix F/G.

14(1)(b) of the *Code*. As with Flyers D and E, the Tribunal failed to consider the entire context of the flyer and the circumstances in which it was distributed. Further, there is no analysis of why it was a breach of s. 14(1)(b) of the *Code*. In my view, the Tribunal's decision is a conclusion without analysis.

[82] The Queen's Bench judge took only the first statement and drew the inference that Whatcott was clearly referring to boys as young children.[46] This conclusion is problematic because the word "boy" is open to a number of interpretations.[47] In my view the Queen's Bench judge took one word, the meaning of which is ambiguous, and concluded this flyer was a "reference to homosexuals as a group that sexually desires and abuses young children".[48]

[83] The first task is to view the flyers in the entire context considering the circumstances in which it is distributed. Flyers F and G appear to be a criticism of particular advertisements contained in the magazine "Perceptions Classified". In one advertisement, Whatcott drew attention to the phrase, "any age" and in a second advertisement, the phrases "boys/men" and "[y]our age … not so relevant".

[84] SHRC takes the position that criticizing troubling classified advertisements in the Perceptions publication is a valid criticism, but argues that these flyers lose their "… redeeming value when categorizing all gay men

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[46] See para. 20 of this judgment.
[47] Transcript of Human Rights Tribunal Held at Regina, Saskatchewan on Monday, February 10th, 2003, Vol. 1, Q/A 143 at p. 96.
[48] *Supra* note 9 at para. 25.

as a danger to children by identifying the publication as Saskatchewan's largest gay magazine".[49]

[85] The SHRC contends that the reason the flyers are a prohibited publication is that by identifying the classified ads which "allows ads for men seeking boys" in "Saskatchewan's largest gay magazine", coupled with an alleged 'misquote' from the Bible that: "[t]he flyers unmistakably characterize gay men as a threat to children …."[50] SHRC argues that it is the reference to this as a "gay magazine" that leads to the conclusion that this publication is discriminatory. In my view, a reasonable person on a reading of the plain wording of the flyer in its entirety would not conclude that the effect of the flyer exposes or tends to expose homosexuals to hatred as that term is prescribed by *Bell*.

[86] As stated in *Owens*, the test for whether the publication breaches the *Code* must be clear on the face of the publication from an objective perspective. Unlike the situation in *Bell*, which involved the interpretation of symbols, in this instance we are concerned with interpreting statements. Unlike the situation in *Owens*, there is nothing in the quote attributed to Jesus Christ that suggests it refers to homosexuals. Where the words and phrases are as ambiguous as they are here, it will be difficult to conclude from an objective perspective that the publication exposes, or tends to expose, homosexuals to hatred as that term is prescribed by *Bell*.

[49] Factum of the Respondent, Saskatchewan Human Rights Commission at para. 47.
[50] *Ibid.* at para. 44.

[87] Accordingly, I conclude that Flyers F and G are not prohibited publications within the meaning of s. 14(1)(b) of the *Code*.

Conclusion

[88] Freedom of expression is not an absolute right and limitations have been included in legislation, including the *Code*, the *Charter* and the *Criminal Code*. I am disposing of this appeal on the basis of the *Code*, and specifically, the protection of freedom of expression found in ss. 5 and 14(2) of the *Code*, and its effect when considering a breach of s. 14(1)(b). I acknowledge that significant arguments have been made during this appeal by some of the parties with respect to the issue of freedom of religion, the difference between sexual orientation and sexual behaviour, and of course, the effect of the *Charter*, s. 2(a) and (b) and s. 1, with respect to an alleged breach of s. 14(1)(b) of the *Code*. However, because this case is resolved solely on the basis of the specific provisions in the *Code*, it is unnecessary to deal with any of the other grounds of appeal advanced by Whatcott or issues raised by any of the other parties and I decline to do so.

[89] I conclude that the four publications Whatcott distributed, which were the basis for the complaints adjudicated under the *Code*, properly considered, did not offend s. 14(1)(b) of the *Code*. Accordingly, the appeal is allowed and the decision of the Court below is set aside. Whatcott is entitled to costs from the SHRC on Column 2 of the Tariff of Costs on the appeals in this Court and in the Court of Queen's Bench.

DATED at the City of Regina, in the Province of Saskatchewan, this 25th day of February, A.D. 2010.

"Hunter J.A."_____
HUNTER J.A.

I concur "Smith J.A." _____
for SHERSTOBITOFF J.A.

Smith J.A.

[90] I have had the opportunity to read the reasons provided by Hunter J.A. and I agree with her conclusion that the appeal must be allowed on the basis that, on a proper interpretation of s. 14(1)(b) of the *Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1, the flyers distributed by the appellant did not offend the prohibition of that section against distribution of material that tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground. However, I would like to add some comments, as this seems to me to be an appropriate case to try to bring together some of the principles of interpretation of this troublesome provision that have emerged from the earlier decisions of this Court in *Engineering Students' Society* [(1989), 56 D.L.R. (4th) 604], *Bell* [(1994), 120 Sask. R. 122], and *Owens* [2006 SKCA 41, 267 D.L.R. (4th) 733], and from the decision of the Supreme Court of Canada in *Taylor* [[1990] 3 S.C.R. 892], all decisions discussed by Hunter J.A.

[91] As has been pointed out, the first decision by this Court dealing with s. 14(1) of the *Code*, as it then was, was that authored by Cameron J.A. in *Engineering Students' Society* in 1989. Hunter J.A. has set out the facts of that case. At the time the case was decided, s. 14 read as follows:

> 14(1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broad-casting station or any other broad-casting device or in any printed matter or publication or by means of any other medium that he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons of any right to which he is or they are entitled under the law, *or which exposes, or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person, any class of persons or a group of persons because of his or*

> *their race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin.* [Italics added]
>
> (2) Nothing in subsection (1) restricts the right to freedom of speech under the law upon any subject.

[92] In his decision, Cameron J.A. was principally concerned with two issues: whether the portion of s. 14(1) above italicized exceeded the legislative jurisdiction of the province to regulate property and civil rights, and infringed upon the federal power over criminal law; and whether, in any case, the publications complained of fell within the description "notice, sign, symbol, emblem or other representation" as set out in the section.

[93] Cameron J.A. addressed the first of these issues by examining in some detail the context of the *Code*, concluding that s. 14 fell to be interpreted in the context of the principal purposes of the legislation: to gain greater public recognition of human worth and dignity and to discourage and eliminate discrimination. He noted that Part II of the *Act*, within which s. 14 fell, did not "purport to prohibit or discourage discrimination at large, or on any ground whatsoever, but only in relation to certain activity in fields falling within provincial legislative capacity, such as employment, housing, public accommodation and so on, and then only on the grounds enumerated." [72 Sask.R. 161 at para. 38, emphasis in the original.] He eventually concluded that a "two pronged' test was necessary:

> [59] Before turning to the express language of the section, we might say that we have concluded in light of the foregoing that the section requires, by implication, that the message have a specific effect or effects in order to be caught by the section. *The message must not only ridicule, belittle or otherwise affront the dignity of the person or class, it must be such as to cause or be likely to cause others to engage in one or more of the discriminatory practices prohibited by ss. 9 through 13 and 15 through 19.* [Italics added.]

[94] On the second point, Cameron J.A. concluded that the phrase "any notice, sign, symbol, emblem or other representation" could not be seen as prohibiting the making of any statement, and, on this basis, ultimately concluded that the mode of publication impugned in that case did not fall within the section and the appeal must be allowed.

[95] Subsequent to this decision, s. 14(1) of the *Code* was amended to divide it into subsections (a) and (b), as it now reads, and to add to the list of prohibited expressions the words "article or statement". This has been seen as sufficient to address the second of the concerns addressed by Cameron J.A.

[96] As to the necessity of the "two-pronged test", it is interesting to note that in the *Engineering Students' Society* decision, Cameron J.A. had come to the conclusion that, although the publications complained of could not be said to have directly explicitly encouraged any of the discriminatory activities prohibited by ss. 9 through 13 or 15 through 19 of the *Act*, the Board of Inquiry had not erred in its assessment of the effect of the publications:

> [80] . . . It appears to have recognized, in principle, the implicit requirements of the section as to effect, and it found, as a matter of fact, that the requirement had been met. It said this:
>
> > the *Code*'s section 14(1) protects women against material which indicates discrimination in that it ridicules, belittles and affronts the dignity of women by tending to deny them equal status as members of the human family and thereby denied them rights guaranteed by the *Code*. [emphasis in Sask. R.]
>
> Later having referred to *Singer's* case and having noted that the impugned material stereotyped women in offensive ways, the Board said:
>
> > discrimination like this jeopardizes their opportunity to obtain equality rights including employment, education and security of their persons on an equal footing … The effect of such representations [as contained in the impugned matter] is to reinforce and legitimate prejudice against women. It prolongs the existence of

> hangovers of prejudice against equal female participation in education, work, aspects of social life and the professions.

[97] It is reasonable to conclude, in my view, that although the general context and aims of the *Code* must be taken into account in determining whether any impugned expression falls within the prohibition in s. 14(1)(b) and in particular the causal connection between the expression and the discriminatory practices otherwise prohibited in Part II of the *Code*, this requirement may be met by a finding that the causal effect of the expression is, for example, to promote stereotypes that themselves jeopardize equal opportunities for employment, housing, education, and so on. This interpretation goes some way to explain why the "two-pronged test", although acknowledged in subsequent cases, has not played a significant role in those decisions. In other words, it may be that we have come to acknowledge or assume that words that belittle, ridicule, affront the dignity or promote hatred of individuals may in themselves bring about the discriminatory activities otherwise prohibited by the *Code*. Nonetheless, as the Court in this case was not asked to decide whether the s. 14(1) provision offended the *Charter*, all this may be neither here nor there.

[98] Having said that, of lasting import from this decision, in my view, is the insight that the interpretation of s. 14(1)(b) must be read in the context of the principles and aims of the *Code*, considered as a whole. This insight plays an important role in support of the principle, enunciated by Hunter J.A., that, particularly in light of s. 14(2), a proper interpretation of s. 14(1) requires that, in its implementation, the rights protected by that provision must be balanced against the rights, otherwise enunciated in the *Code*, of freedom of speech and

freedom of religion. This, in turn, requires that consideration of the discriminatory effects of the impugned speech be balanced against the rights of freedom of speech and freedom of religion of the speaker. It requires careful consideration of the likely causal effects of the expression under review.

[99] In 1990, in the interval between this decision and the next decision of this Court interpreting s. 14(1) of the *Code*, in *Bell*, in 1994, the Supreme Court of Canada issued its decision in *Taylor*. As has been indicated, this case involved the interpretation and application of s. 13(1) of the *Canadian Human Rights Act*, S.C. 1976-1977, c. 33:

> 13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

[100] Dickson C.J. described this section as a prohibition against "hate propaganda". As federal legislation, this provision did not raise the division of powers issue that concerned Cameron J.A. in *Engineering Students' Society*. Rather, the issue raised was whether the provision, in so far as it restricted the communication of certain telephone messages, violated the right to freedom of expression as guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. The relevant provisions of the *Charter* are as follows:

> 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> 2. Everyone has the following fundamental freedoms:

...

> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

[101] Dickson C.J. had no difficulty in concluding that s. 13(1) infringed the constitutional guarantee of free expression. The crucial question was whether, nonetheless, the infringement was justified as a reasonable limit in a free and democratic society under s. 1 of the *Charter*.

[102] It is of some significance for points I wish to argue below that, at the outset of his analysis, the Chief Justice made the point that, while s. 13(1) encompassed prohibitions against expressions promoting hatred against persons on the basis of any of the grounds of discrimination prohibited by the *Canadian Human Rights Act*, it had been argued in the courts below and before the Supreme Court only in so far as it concerned the grounds of race or religion. Because the effect of the *Charter* upon other prohibited grounds was not raised, he expressly limited his comments to the question of whether the effect of s. 13(1) upon communications tending to expose persons to hatred or contempt on the bases of race or religion violated the *Charter*. (See p. 913.)

[103] Section 13(1) was clearly a limit "prescribed by law". The *Oakes* test [[1986] 1 S.C.R. 103] was therefore applied to determine whether the section was a reasonable limit demonstrably justified in a free and democratic society. This analysis, Dickson C.J. indicated,

> [35] …requires an approach sensitive to the context of a given case, it being necessary to explore the nature and scope of constitutionally entrenched human rights in the light of the facts at hand. (At p. 916).

Further, the application of the *Oakes* test to the legislation at issue required a balancing of competing constitutional values:

> [36] In applying the *Oakes* approach to legislation restricting hate propaganda, a meaningful consideration of the principles central to a free and democratic society requires reference to the international community's acceptance of the need to protect minority groups from the intolerance and psychological pain caused by such expression. Such a consideration should also give full recognition to other provisions of the *Charter*, in particular ss. 15 and 27 (dealing with equality rights and multiculturalism). Finally, the nature of the association between the expression at stake in the appeal and the rationales underlying s. 2(b) will be instrumental in assessing whether a particular legislative effort to eradicate hate propaganda is a reasonable limit justified in a free and democratic society. (At 916-7)

[104] In concluding that the objective behind s. 13(1) was of substantial and pressing importance, Dickson C.J. relied on evidence of the harm caused by hate propaganda: individuals subject to racial or religious hatred might suffer psychological distress eventually causing them to renounce cultural differences that marked them as distinct and detracting from their ability to make the best lives for themselves; and it could convince listeners that members of the target group were inferior, resulting in increased acts of discrimination. Seeking to prevent these harms was of substantial importance.

[105] Dickson C.J. then turned to the importance of the value of freedom of expression, again emphasizing the importance of a contextual approach to the analysis, and the particular importance of democratic values protected by s. 2(b) of the *Charter*:

> 47 Before examining in earnest the proportionality of s. 13(1) to the parliamentary objective, it is important that something be said regarding both the values supporting the free expression guarantee and the nature of the expression at stake in this appeal. In the abstract, it is unarguable that freedom of expression is held especially dear in a free and democratic society, this *Charter* guarantee

> providing the bedrock for the discovery of truth and consensus in all facets of human life, though perhaps most especially in the political arena. Additionally, this freedom allows individuals to direct and shape their personal development, thereby promoting the respect for individual dignity and autonomy that is crucial to (among other things) a meaningful operation of the democratic process.
>
> 48 As is evident in *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232, however, and as I emphasize in *Keegstra*, in balancing interests within s. 1 one cannot ignore the setting in which the s. 2(b) freedom is raised. It is not enough to simply balance or reconcile those interests promoted by a government objective with abstract panegyrics to the value of open expression. *Rather, a contextual approach to s. 1 demands an appreciation of the extent to which a restriction of the activity at issue on the facts of the particular case debilitates or compromises the principles underlying the broad guarantee of freedom of expression.* [emphasis added]

[106] Significantly, however, having acknowledged the importance of the role that freedom of expression plays in a democratic society, the Chief Justice went on to make the point that the speech at issue in *Taylor*, namely, hate propaganda directed at persons on the basis of race and religion, deserved less robust protection than speech closer to the core values protected by s. 2(b) of the *Charter*. He quoted and relied on this passage from his judgment in *R. v. Keegstra*, [1990] 3 S.C.R. 697:

> [94] …I am of the opinion that hate propaganda contributes little to the aspirations of Canadians or Canada in either the quest for truth, the promotion of individual self-development or the protection and fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged. While I cannot conclude that hate propaganda deserves only marginal protection under the s. 1 analysis, I can take cognizance of the fact that limitations upon hate propaganda are directed at a special category of expression which strays some distance from the spirit of s. 2(b), and hence conclude that "restrictions on expression of this kind might be easier to justify than other infringements of s. 2(b)….[766, quoted in *Taylor* at 922]

[107] In relation to the proportionality part of the *Oakes* test, the Chief Justice found no difficulty in finding a rational connection between s. 13(1) and its

aims of promoting equality and tolerance in society. The requirement of minimal impairment, however, called for a careful consideration of the wide range of meanings available for the words “hatred” and “contempt” as used in s. 13(1) that would both provide a purposive definition to the legislation and not extend so far as to permit the limitation of freedom of speech not otherwise justified under s. 1. Citing a decision of the Human Rights Tribunal in *Nealy v. Johnston* (1989) 10 C.H.R.R. d/6450, the Chief Justice concluded as follows:

> 61 The approach taken in *Nealy* gives full force and recognition to the purpose of the *Canadian Human Rights Act* while remaining consistent with the *Charter*. The reference to "hatred" in the above quotation speaks of "extreme" ill-will and an emotion which allows for "no redeeming qualities" in the person at whom it is directed. "Contempt" appears to be viewed as similarly extreme, though is felt by the Tribunal to describe more appropriately circumstances where the object of one's feelings is looked down upon. According to the reading of the Tribunal, s. 13(1) thus refers to unusually strong and deep-felt emotions of detestation, calumny and vilification, and I do not find this interpretation to be particularly expansive. To the extent that the section may impose a slightly broader limit upon freedom of expression than does s. 319(2) of the *Criminal Code*, however, I am of the view that the conciliatory bent of a human rights statute renders such a limit more acceptable than would be the case with a criminal provision.
>
> 62 In sum, the language employed in s. 13(1) of the *Canadian Human Rights Act* extends only to that expression giving rise to the evil sought to be eradicated and provides a standard of conduct sufficiently precise to prevent the unacceptable chilling of expressive activity. Moreover, as long as the Human Rights Tribunal continues to be well aware of the purpose of s. 13(1) and pays heed to the ardent and extreme nature of feeling described in the phrase "hatred or contempt", there is little danger that subjective opinion as to offensiveness will supplant the proper meaning of the section. (pp. 928-29)

[108] Dickson C.J. then considered the absence of a provision in the federal legislation of a provision comparable to subsection 14(2) of the Saskatchewan *Code*, making the prohibition against hate propaganda subject to the right of freedom of expression. He noted that such a provision could not apply literally,

for the prohibition provision necessarily placed some limits on freedom of expression. Significantly, however, he then went on to say this:

> 65 Perhaps the so-called exemptions found in many human rights statutes are best seen as indicating to human rights tribunals the necessity of balancing the objective of eradicating discrimination with the need to protect free expression (see, e.g., *Rasheed v. Bramhill* (1980), 2 C.H.R.R. D/249, at p. D/252). In any event, I do not think it in error to say that even in the absence of such an exemption an interpretation of s. 13(1) consistent with the minimal impairment of free speech is necessary. I say this with an eye to pre-*Charter* cases in which freedom of expression is discussed, these making it evident that an interpretative stance designed to prevent the undue infringement of freedom of expression is available to the courts (see, e.g., *Boucher v. The King*, [1951] S.C.R. 265; *R. v. Carrier* (1951), 104 C.C.C. 75 (Que. K.B.)). It is thus telling that in *Taylor* the Tribunal was appreciative of both the common law's predilection for interpretations guarding open expression and the guarantee of freedom of speech in s. 1(d) of the *Canadian Bill of Rights* in determining the scope of s. 13(1). (p. 930)

[109] Sherstobitoff J.A., writing for the Court in *Bell*, also a case dealing with allegations of discriminatory speech aimed at individuals on the grounds of race, had to consider whether s. 14(1) of the Saskatchewan *Code* infringed s. 2(b) of the *Charter*. He was satisfied that the decision in *Taylor* was determinative, and, of course, was binding on him, insofar as the section prohibited promotion of “hatred” as that term was defined in *Taylor*. He then went on to consider whether, however, s. 14(1) went too far in also prohibiting material that ridicules, belittles or otherwise affronts the dignity of any group because of race or religion. He in effect read down the provision, concluding as follows:

> 31 The legislation under consideration in *Taylor* prohibited communications which were "likely to expose ... to hatred or contempt." The prohibition in s. 14 against communications which expose or tend to expose to hatred, or which "ridicule, belittle or otherwise affront the dignity" of persons is so similar to that considered in *Taylor* that the words of Dickson C.J. at p. 929 apply:
>
> > In sum, the language employed in s. 13(1) of the *Canadian Human Rights Act* extends only to that expression giving rise to the evil sought to be eradicated and provides a standard of conduct sufficiently precise to prevent the unacceptable

> chilling of expressive activity. Moreover, as long as the Human Rights Tribunal continues to be well aware of the purpose of s. 13(1) and pays heed to the ardent and extreme nature of feeling described in the phrase 'hatred or contempt', there is little danger that subjective opinion as to offensiveness will supplant the proper meaning of the section.

32 This reasoning is reinforced by the fact that s. 14 of the *Code* is tempered by interpretative and exemption provisions which were absent in the legislation under consideration in *Taylor.* Subsection (2) of s. 14 provides:

> (2) Nothing in subsection (1) restricts the right to freedom of speech under the law upon any subject.

Section 5 provides:

> 5 Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device. Such provisions are normal in human rights legislation and Dickson C.J. said as follows in reference to such provisions at p. 930:
>
> > Perhaps the so-called exemptions found in many human rights statutes are best seen as indicating to human rights tribunals the necessity of balancing the objective of eradicating discrimination with the need to protect free expression (see, e.g., *Rasheed v. Bramhill* (1980), 2 C.H.R.R. D/249, at p. D/252).

[110] In my view, two themes, related and, indeed, overlapping, emerged from these decisions, later to be reinforced by this Court's decision in *Owens:* (1) the constitutional requirement to engage in a careful contextual analysis when considering the application of a provision such as s. 14(1) that, on its face, limits freedom of expression, to ensure that it does not, in its application, exceed the s. 1 justification for this infringement enunciated in *Taylor* and accepted by this Court in *Bell*; and, (2) the need, in the context of the Saskatchewan legislation, to balance the goals of s. 14(1) against other rights protected in the *Code*, and, in particular, the right to freedom of expression.

[111] Unlike *Taylor* and *Bell*, which dealt with promotion of hatred, ridicule, etc. on the basis of race or religion, *Owens* concerned a finding by a Board of

Inquiry under the *Code* that publications by Mr. Owens exposed or tended to expose to hatred, or ridiculed, belittled, or otherwise affronted the dignity of the complainants on the basis of sexual orientation. The details of Mr. Owens' publications are described by my colleague. Mr. Owens argued that his publications did not promote hatred or otherwise offend s. 14(1)(b) of the *Code* and, also, that the Board of Inquiry and the Court of Queen's bench, on appeal, had failed to give proper consideration to the fact that in publishing the impugned material he was exercising his freedom of religion.

[112] Richards J.A., writing for the Court, considered that in determining whether the published material violated s. 14(1)(b) the principal question before him was the meaning and scope of s. 14(1)(b). Whether the application of this provision to the circumstances before the Court violated s. 2(b) of the *Charter* was not raised on the appeal. It is clear from what followed that Richards J.A. was talking not only about "interpretation" of the provision in a broad and abstract sense, but also of "scope" in the more narrow sense of the proper application of the provision to the particular publications of Mr. Owens that were before the Court.

[113] He began his analysis with the point that freedom of speech and religion had to be considered carefully when interpreting (and, by implication, applying) s. 14(1)(b), pointing out both that these values were protected by the *Charter* and could only be limited in ways that are reasonable and demonstrably justifiable within the meaning of s. 1 of the *Charter*, and that they were also enshrined in the *Human Rights Code* itself, in sections 4, 5 and 14(2). Thus, as he commented:

> [44]….First, as the Supreme Court noted in *R. v. Zundel*, [1992] 2 S.C.R. 731 at p. 771, when a statute is susceptible of alternative interpretations, the one which accords with the *Charter* and the values to which it gives expression should be preferred. Second, as a matter of pure statutory interpretation, s. 14(1)(b) must be read in the context of the *Code* as a whole and, to the extent reasonably possible, given a construction which is consistent with an overall legislative scheme which respects and guarantees freedom of speech and religion…..

[114] Richards J.A. then turned to a consideration of *Taylor* and *Bell*, concluding that these decisions mandated that s. 14(1)(b) be read as prohibiting only expressions involving feelings of an ardent and extreme nature and, in particular, unusually strong and deep-felt emotions of detestation, calumny and vilification in order to pass constitutional muster. He commented:

> 52 Thus, while *Bell* upheld s. 14(1)(b) of the *Code* as being a reasonable limit on freedom of expression, it did so on a very particular basis. The Court saw s. 14(1)(b) as operating only in those situations where the "ridicule", "belittlement" or "affront to dignity" in issue met the standard endorsed in *Taylor*. In other words, the Court interpreted the prohibition against ridicule, belittlement and affronts to dignity as extending only to communications of that sort which involve extreme feelings and strong emotions of detestation, calumny and vilification.
>
> 53 No other result, of course, could be justifiable. Much speech which is self-evidently constitutionally protected involves some measure of ridicule, belittlement or an affront to dignity grounded in characteristics like race, religion and so forth. I have in mind, by way of general illustration, the editorial cartoon which satirizes people from a particular country, the magazine piece which criticizes the social policy agenda of a religious group and so forth. Freedom of speech in a healthy and robust democracy must make space for that kind of discourse and the *Code* should not be read as being inconsistent with that imperative. Section 14(1)(b) is concerned only with speech which is genuinely extreme in the sense contemplated by the *Taylor* and *Bell* decisions.

[115] He emphasized that in applying s. 14(1)(b), it was necessary to use an objective approach, relying not solely on the subjective understanding and reaction of individuals targeted by the speech, nor on the subjective perspective of the author of the publication.

> 60 As a result, it is apparent that s. 14(1)(b) must be applied using an objective approach. The question is whether, when considered objectively by a reasonable person aware of the relevant context and circumstances, the speech in question would be understood as exposing or tending to expose members of the target group to hatred or as ridiculing, belittling or affronting their dignity within the restricted meaning of those terms as prescribed by Bell.

[116] As I have already noted, in applying this approach to the contents of the publications at issue in *Owens*, Richards J.A. emphasized the need for a contextual approach. In doing so, he looked in particular at three things: (1) the circumstances of gays and lesbians in Canada who were targeted by the publications; (2) the broad political and historical context in which the advertisements were published; and (3) the overall content of the publications themselves.

[117] The first of these contextual considerations led Richards J.A. to note "the long history of discrimination against gay, lesbian, bisexual and trans-identified people in this country and elsewhere" (para. 65), noting that in *Egan v. Canada*, [1995] 2 S.C.R. 513 at para. 175, Cory J. had said that gays and lesbians, "whether as individuals or couples, form an identifiable minority who have suffered and continue to suffer serious social, political and economic disadvantage" (para. 75). He concluded that "[t]he evidence of the complainants in this case clearly revealed the marginalization and fear which are part of the life many gay men are obliged to live" (para. 65).

[118] The second contextual consideration led him to note that the publications were published in the middle of an ongoing national debate about the accommodation of sexual identities:

> 67 This does not mean that a newly won right to be free from discrimination should be accorded less vigorous protection than similar rights based on more historically established grounds such as race and religion. *But, for purposes of applying a provision like s. 14(1)(b) of the Code, it is important to consider Mr. Owens' advertisement in the context of the time and circumstances in which it was published.* That environment featured an active debate and discussion about the place of sexual identity in Canadian society. Indeed, the advertisement at issue here was published in connection with gay pride week - an event promoted by the gay community as a celebration of diversity and used in part as a platform for the advancement of gay rights. [emphasis added]
>
> 68 Seen in this broader context, Mr. Owens' advertisement tends to take on the character of a position advanced in a continuing public policy debate rather than the character of a message of hatred or ill will in the sense contemplated by *Bell*. Both the Board of Inquiry and the Chambers judge erred by failing to give any consideration to this wider context.

[119] The third contextual consideration led Richards J.A. to insist that allegedly “hateful” expressions be read in the context of the publication as a whole, and not piece-meal.

[120] If I seem to belabor the point of context it is to make this point. Context is relevant not merely to the abstract interpretation of the “meaning” of the statutory provision, or of the impugned expression. It is crucial in a broader sense to the issue of the proper application of the statutory provision to the expression at issue, for only a contextual analysis can insure that that application of the legislative prohibition does not exceed the limitations to freedom of expression justifiable in a free and democratic society **and** that it respects the balance between competing values required by the *Code* itself.

[121] Thus, in my respectful view, although it is a necessary first step to examine the abstract meaning of the words complained of to determine whether they are objectively *capable* of expressing the emotive level

described in *Taylor*, "of an ardent and extreme nature and, in particular, unusually strong and deep-felt emotions of detestation, calumny and vilification", (if not, of course, the inquiry must end there), the inquiry does not, with respect, otherwise *end* with a determination of where, on an emotive continuum, the expression lies. If that were so, the first two contextual considerations that *Owens* (and also, implicitly, *Taylor*) mandates, the circumstances of historical disadvantage and vulnerability of the target group on the one hand and the broader historical and political context in which the expression was made, on the other, would be irrelevant. These considerations *are* relevant because they allow us to balance the competing constitutional and legislative values at issue—to weigh the need to protect the vulnerable group from the effects of the impugned speech as against the constitutional value of that speech, not merely at the stage of determining, in the abstract, whether the legislative provision meets constitutional muster, but also in its application, to ensure that, at that stage, an interpretation is not give to the section that would remove it from the s. 1 justification it otherwise enjoys.

[122] In the arguments before us, one of the interveners, the Canadian Civil Liberties Association, urged that we revisit the question of the constitutionality of s. 14(1)(b), arguing that the circumstances in *Taylor* could be distinguished and that, in any case, that decision is now dated and "since that time, we have gained significant experience with the manner in which persons who are offended by the content of another's expression (indeed, sometimes deeply and perhaps justifiably offended), may seek to use human rights commissions for vindication and redress".

[123] In my opinion, it is not open to us to do quite this. This Court in *Bell* accepted that *Taylor* was decisive on the issue of whether s. 14(1)(b), properly interpreted, was constitutionally invalid by virtue of s. 2(b) of the *Charter*. In *Owens*, the Court further concluded that, while the section did, in the circumstances before it, infringe the freedom of religion of Mr. Owens protected by s. 2(a) of the *Charter*, the arguments in *Taylor* with respect to justification of the limitation under s. 1 of the *Charter* applied with equal or greater force to this infringement. Reconsideration of the decision in *Taylor* necessarily lies, in my view, with the Supreme Court of Canada. This Court is bound by that decision and by the subsequent decisions of this Court that have applied it to the provincial legislation.

[124] Nonetheless, it is clear from the considerations I have outlined above that the constitutional values do not, for that reason, become irrelevant when it comes to the interpretation and application of s. 14(1)(b). I noted earlier that Dickson C.J. expressly limited his comments in *Taylor* to the context of hate propaganda directed at individuals on the basis of race and religion, and, in his analysis, that he accorded a reduced constitutional value to such speech. The limited definition of hate propaganda that emerged from that case was directed to insure that the limitation of s. 2(b) rights upheld did not exceed what was reasonably justifiable under s. 1. Accordingly, it is open to this Court, in my view, to consider, on a reading of the judgment in *Taylor* as a whole, whether the restricted meaning given to the phrase “promotes hatred or contempt”, in terms of the emotive level of the expression, exhausts the considerations to be taken into account when determining whether and to what extent similar prohibitions may constitutionally be extended to speech on

bases other than hate propaganda directed at individuals on the basis of race and religion. In short, it is my view that other considerations may come in to play in appropriate cases requiring limits to be placed on the interpretative scope of a statutory provision to insure that the section not be applied in a way that would remove it from the s. 1 justification advanced in *Taylor*.

[125] I turn, then, to the contextual examination mandated by *Owens*.

[126] The first consideration is that of the historical disadvantage and vulnerability of the group targeted by the publications at issue, primarily gay men but also gays and lesbians more generally. This analysis must also consider the harm caused to this group by the publications at issue, within the context of the rights sought to be protected by the *Code*.

[127]The tribunal, in its decision, summarized the evidence of Gens Hellquist, an expert witness called by the Commission, and that of two complainants. The testimony of the complainants was in relation to the emotional impact the publications had on them. They were offended, hurt and, to some extent, frightened. The expert witness, Gens Hellquist was employed as the executive director of the Gay and Lesbian Health Services in Saskatoon. He testified about the impact that homophobia has in the lives of gay, lesbian, bisexual and transgendered people. He testified that the gay/lesbian community is subjected to numerous forms of widespread discrimination consisting of taunting and being called derogatory names, anti-gay jokes, physical violence and gay bashing, loss of employment and loss or denial of accommodation as a result of their sexual orientation. However, the heart of his evidence turned

on the loss of self esteem and depression suffered by members of this community as a result of being made to feel uncomfortable about their sexual identity. He pointed out that a third of all adolescent suicides are committed by gay or lesbian youth (approximately ten percent of the population) and that substance abuse is also three times higher.

[128] Although it cited this testimony, in its decision the Tribunal made no explicit finding about the discriminatory effects of the Walcott flyers in particular. It simply concluded that the material contained in them, viewed objectively, exposed or tended to expose to hatred, ridiculed, belittled or otherwise affronted the dignity of persons on the basis of their sexual orientation.

[129] The appellant, as well as some of the interveners, have argued that the Tribunal, as well as the Court of Queen's Bench, in upholding the Tribunal decision, failed to distinguish between publications that made negative remarks about individuals, on the basis of their sexual orientation, and publications that criticized, not sexual orientation, but same-sex sexual conduct.

[130] It is always logically possible and sometimes important to distinguish expressions of disapprobation of a minority or historically disadvantaged group from disapprobation of some of the conduct or practices in which that group engages. One intervener, the Canadian Constitution Foundation, made the point that the Jewish practice of circumcising male infants, the Roman Catholic practice of rejecting artificial methods of birth control, and the

practice of many religions in excluding women from positions of leadership have all been subjected to extensive public criticism, sometimes in polemical language. Clearly protection of freedom of expression must be sufficiently robust to permit these debates.

[131] From the perspective of the gay/lesbian community, however, this distinction must, surely, ring hollow, for it is precisely that widespread intolerance and disapprobation of same-sex *conduct or practices* that cause the loss of dignity and self esteem, marginalize, and cause the mental health consequences for those with same-sex sexual orientation that are described by Gens Hellquist. It is only the widespread acceptance or tolerance of those sexual practices that will, ultimately, make this society a place in which this particular community can be comfortable and secure.

[132] For this reason, it is not surprising that Human Rights Tribunals tend to equate polemical critiques of same-sex conduct as equivalent to attacks on persons of same-sex sexual orientation. Insofar as those critiques undermine the general tolerance of the sexual conduct, so, too, do they undermine self esteem and the possibility of a healthy and secure life of dignity and self worth to persons of same-sex sexual orientation.

[133] There is, nonetheless, another side to this argument. The issue was considered by Richards J.A. in *Owens*:

> 82 A third point, stressed by Mr. Owens and the interveners supporting him, is that the Bible passages in issue refer to behaviour said to be sinful or morally wrong and do not condemn the mere fact of gay men's sexual identity. In most contexts, I would have difficulty placing stock in what is sometimes referred to as the distinction between the "sin" and the "sinner." Sexuality and sexual practices are

> such intimately central aspects of an individual's identity that it is artificial to suggest that the practices of gays and lesbians in this regard can somehow be separated out from those individuals themselves. However, in the present circumstances, it is necessary to recognize that many people do make such a distinction and believe on moral or religious grounds that they can disapprove of the same-sex sexual practices without disapproving of gays and lesbians themselves. This fact is at least part of the overall context in which Mr. Owens' advertisement must be considered. Again this tends to shade the content of the advertisement away from it being the sort of message which falls within the scope of s. 14(1)(b) of the *Code*.

[134] As this passage indicates, the fact that it is the activity, rather than the individuals themselves, to which the polemic in the impugned flyers is directed, is of considerable significance when considering the broad context of the flyers, and, therefore, how they must be interpreted for the purpose of s. 14(1)(b). Moreover, it is also of significance in considering the s. 2(b) value that is in issue in their suppression, for this reason: questions of sexual morality are questions intricately involved in public policy as well as individual autonomy. For this reason, in a free and democratic society, they lie near the heart of speech worthy of protection from the chilling effects legislative prohibition.

[135] In the instant case, the matter goes further. The flyers marked as D and E, set out in full in Hunter J.A.’s opinion, address the manner in which children in the public school system are to be exposed to messages about different forms of sexuality and sexual identity. This is beyond question an important matter of public policy and it is inherently controversial. It must always be open to public debate. That debate will sometimes be polemical and impolite. The flyers marked as exhibits F and G concern the advertising policy of a gay publication and, in essence, express concern that it allows solicitation

of underage partners for same-sex activity. This, too, is a legitimate and even important matter of public concern.

[136] While exception is understandably taken to the extreme language used in and on these flyers, the position of the complainants and the Commission would not differ, in my view, if more polite language were used to express the same views, for the real objection is to the essential message of the flyers and this would remain. The flyers are critical of same-sex conduct. The authors do not want tolerance of that conduct to be taught in schools and they do not want young people to be exposed to it. Thus, the concerns of the complainants and the commission with these flyers are not advanced, in my view, by a close analysis of the emotive level of the negative language used in them and this analysis is largely beside the point.

[137] Moreover, the analysis of the language used, coloured, as it is, by justifiable fear of and distaste for intolerance and bigotry, easily becomes deeply subjective and unreliable. For example, it is the claim of the Flyers identified as exhibits G and F that a gay magazine allows advertisement for underage sexual partners that is found most offensive by the Tribunal. But this, surely, is an entirely legitimate matter of public concern. The suggestion that this in itself carries the unacceptable implication that all gays are pedophiles and, for that reason, contravenes the prohibition against promotion of hatred on the basis of sexual orientation is, in my view, unreasonable, and well indicates the dangers inherent in this approach to the interpretation and application of s. 14(1)(b) in this context.

[138] This point underscores the difficulty of interpreting s. 14(1)(b) in such a way that it limits or prohibits pejorative expression in relation to same-sex sexual activity. Such speech engages the constitutional values of freedom of expression in a way that the hate propaganda considered in *Taylor* does not. In my respectful view, where, on an objective interpretation, the impugned expression is essentially directed to disapprobation of same-sex sexual conduct in a context of comment on issues of public policy or sexual morality, its limitation is not justifiable in a free and democratic society. The objective purpose of such discourse is not the promotion of hatred, and a proper interpretation of s. 14(1)(b) therefore cannot be said to prohibit or limit it. This is not to say that speech that *purports* to fall within this category might not be found, on an objective interpretation, to have a more sinister purpose. This would be the case, for example, where the impugned expression is found on proper interpretation to advocate or approve violence on the basis of sexual orientation.

[139] I would add that this point is, in my view, entirely consistent with the result in this Court's decision in *Owens*, where Richards J.A. made the following point:

> [68] Seen in this broader context, Mr. Owens' advertisement tends to take on the character of a position advanced in a continuing public policy debate rather than the character of a message of hatred or ill will in the sense contemplated by *Bell*. …

[140] While this analysis turns largely on the relationship between a proper interpretation of s. 14(1)(b) and constitutional values, I agree with Hunter J.A. that the approach is reinforced by a consideration of the balancing of competing values called for by ss. 4 and 5 and, especially, 14(2) of the *Code*.

[141] With regard to the question of whether the language used in the Whatcott flyers in any case meets the test for "hatred" enunciated in *Taylor* and *Bell*, I have little to add to the analysis offered by Hunter J.A. I agree that the Tribunal offered no analysis to justify its conclusion and that the interpretation given to the flyers by the Court of Queen's Bench failed to read the individual statements in the context of the documents as a whole or in the larger context of issues of public policy that they raised.

[142] I would allow the appeal.

DATED at the City of Regina, in the Province of Saskatchewan, this 25th day of February, A.D. 2010.

"Smith J.A."
SMITH J.A.

I concur. "Smith J.A."
for SHERSTOBITOFF J.A.

SCHEDULE "D"

Keep Homosexuality out of Saskatoon's Public Schools !

It has come to the attention of the Christian Truth Activists that a committee on "Gay, Lesbian, Bisexual and Transgendered issues," set up by the Saskatoon Public School Board has recommended that information on homosexuality be included in their curriculum and school libraries. The elementary school teacher's union in Ontario voted this year in favour of this for grades 3 and 4, even though children at this age are more interested in playing Barbie & Ken rather than learning how wonderful it is for two men to sodomize each other. Children in Ontario perform poorly in terms of academics, however, their teachers seem more interested in sexual politics of a perverted type, rather than preparing children to do well when they are older. Now the homosexuals want to share their filth and propaganda with Saskatchewan's children. They did it in Boston, under the guise of "Safe Schools" and their little sensitivity class degenerated into a filthy session where gay and lesbian teachers used dirty language to describe lesbian sex and sodomy to their teenage audience.*

Christian Truth Activists believes that Sodomites and lesbians can be redeemed if they repent and ask Jesus Christ to come into their lives as Lord and Saviour. The Church of Jesus Christ is blessed with many ex -Sodomites and other types of sex addicts who have been able to break free of their sexual bondage and develop wholesome and healthy relationships. We also believe that for sodomites and lesbians who want to remain in their lifestyle and proselytize vulnerable young people that civil law should discriminate against them. In 1968 it was illegal to engage in homosexual acts, now it is almost becoming illegal to question any of their sick desires. Our children will pay the price in disease, death, abuse and ultimately eternal judgment if we do not say no to the sodomite desire to socialize your children into accepting something that is clearly wrong.

Sincerely: Bill Whatcott
Christian Truth Activists
To contact us call: (306) 949-0818
e-mail: jesus.w@accesscomm.ca

To let the public school authorities know that you don't want Saskatchewan's children corrupted by sodomite propaganda call the school board at:
306-683-8200 or fax at: 306-683-8207.
Please call your local trustee as well to let them know they will be gone next election if they vote for implementing any homosexual propaganda in the children's curriculum.

** To find out what happened in Boston: phone (703) 491-7975, or go to: http://www.americansfortruth.com/opening_remarks_by_peter_labarbe.htm*

SCHEDULE "E"

Sodomites in our Public Schools

Toronto Gay Pride Parade, June. 2001

We should be holding conferences on how to reinstate Canada's sodomy laws! Not on how guys like this can be better accepted as your children's teachers. The Toronto Public School Board marches every year in this parade. If Saskatchewan's sodomites have their way, your school board will be celebrating buggery too!

Dear Friends:

The University of Saskatchewan is hosting the 5th annual "Breaking the Silence conference." Some of their workshops have titles like, "It's a drag doing drag in teacher education." Another workshop is named "Getting an Education in Edmonton, Alberta: The case for Queer Youth." Don't kid your selves; homosexuality is going to be taught to your children and it won't be the media stereotypes of two monogamous men holding hands.

The Bible is clear that homosexuality is an abomination. "Be no deceived neither fornicators, nor idolaters, or adulterers, nor sodomites will inherit the kingdom of heaven." 1 Cor 6:9. Romans 1 talks of women giving up natural relations for unnatural ones and men being inflamed in lust for other men. The behaviour in Canada's gay parades is no different than what has happened thousands of years a go, whether it is ancient Rome or Sodom and Gomorrah. Scripture records that Sodom and Gomorrah was given over completely to homosexual perversion and as a result destroyed by god's wrath. Rome also crumbled and many scholars attribute it's moral decadence and lack of discipline as playing a role in her demise.

Canada in its quest for freedom from sexual restraint is following the path of ancient Rome. Our acceptance of homosexuality and our toleration of its promotion in our school system will lead to the early death and morbidity of many children. Ultimately our entire culture will be lost and we will incur the wrath of Almighty God if we do not repent. But there is still hope. We can repent and have our sins forgiven, "Come now, and let us reason together, says the Lord, Though your sins are as scarlet they shall be as white as snow; though they are as red as crimson, they shall be like wool," Isa 1:18. Even though conferences like Breaking the Silence refuse to acknowledge it, every year across North America, thousands of sodomites and lesbians find redemption and healing through the grace and mercy that is found by turning to Jesus Christ the Lord and giver of life.

Sincerely: Bill Whatocott, Christian Truth Activists Phone: (306) 949-0818, Email jesus.w@accesscomm.ca

If the promotion of sodomy in your school system concerns you call: John Gormly and let him and ultimately all of Saskatchewan know: 1877-332-8255

SCHEDULE "F"

Saskatchewan's largest gay magazine allows ads for men seeking boys!

The ads with men advertising as bottoms are men who want to get sodomized. This shouldn't be legal in Saskatchewan!

Bill Whatcott
christian Truth Activists
949-0818/ jesus.w@accesscomm.ca

"If you cause one of these little ones to stumble it would be better that a millstone was tied around your neck and you were cast into the sea" Jesus Christ

CLASSIFIEDS

PERCEPTIONS Classifieds cost $9.00 for the first 25 words (1st form) and $6.00 for each extra 25 words (or extra form). Use the form to the right, or a plain piece of paper, and print clearly your ad. If you wish to have a PERCEPTIONS Drawer # to receive replies add $3.00 per ad.

Save money and increase your replies by advertising in more than one issue. If you pay for your ad to run three times we'll run it the fourth time free. Or pay for your ad to run six times and we'll run it two extra issues (8 times).

All classifieds must be paid in advance by cheque or money order.

Send your ad form along with proper payment to PERCEPTIONS Classifieds, Box 8581, Saskatoon, SK, S7K 6K7. Include your name and address as well as the category you wish your ad to run under.

To answer an ad with a Drawer #, print that Drawer # in the bottom left hand corner of the envelope and mail to PERCEPTIONS Classifieds, Box 8581, Saskatoon, SK, S7K 6K7.

To place your ad in the classifieds

WRITE CLEARLY IN THE SPACES PROVIDED, ONE WORD PER SPACE. YOUR FIRST THREE WORDS WILL BE IN BOLD TYPE.

FORM 1 - $9.00 EXTRA FORM - $6.00

IN MEMORIAM

ANNOUNCEMENTS

Do you live in the country? Do you have livestock? Are you lonely? Perhaps you'd like to join "Out in the Country? This is a group of gay men and women who live on the prairies, and in the country, who like to meet and share country experiences. If interested write: Out in the Country, Box 10, Ravenscrag, SK S0N 0T0 or call (306) 295-4124.

VOLUNTEERS

GAY & LESBIAN HEALTH SERVICES needs you to become a volunteer! We're expanding our programs, many of which need volunteers like you to help them be successful. Call Garnet at 665-1224 to register for next training workshop.

PERCEPTIONS is on the lookout for volunteers for many tasks. If you're a writer, photographer, artist or you'd like to help with distribution or advertising sales (we pay a commission) contact Gens at 306-244-1930.

EMPLOYMENT

Ranch hand needed for year round employment on ranch in Southwest Sask. Must have valid drivers license. Good wages plus room and board. Phone 306-299-4985. (30)

ACCOMMODATIONS

Have you got a house, apartment or suite for rent? Trying to sell your house? Looking for a new place to live? Call Gens at 306-244-01930 to place your ad here!

GROUPS

Coming to Edmonton? Before you do check out the Gay Men's Wednesday Coffee Evenings web page for our upcoming events. http://www.geocities.com/gaycoffee. (29)

SERVICES

DO YOU RUN A SMALL SERVICE BUSINESS? Call (306) 244-1930 to find out how you can reach new customers by advertising in *Perceptions*.

ARTICLES FOR SALE

YOUR AD COULD APPEAR HERE INFORMING GAYS & LESBIAN ACROSS THE PRAIRIES ABOUT YOUR SERVICES. CALL 306-244-1930 TO DISCOVER HOW TO REACH 1000s OF NEW CUSTOMERS FOR A LOW RATE.

BOX OFFICE Video

~Movie Rentals and Sales~
~Game Rentals~
~DVD Rentals~
~Confectionary~

Your Entertainment Place!

202 AVENUE H NORTH, SASKATOON
PHONE 652-1211

CONTACTS - FEMALE

LINKING LESBIANS ON LINE Free Correspondence Club. For information email: freebyte@sprint.ca (30)

CONTACTS - MALE

Saskatoon/Regina male, handsome, 37, seeks friendship and more with attractive male under 40. Non-smoker, health and fun loving. Let's meet and explore. Reply to Perceptions Drawer 58301. (31)

Saskatoon GWM, 35, 235 lbs, 6'1", blue eyes, wants to meet other GWMs 35 - 50 for fun times, movies, bowling, fulfilling fantasies, cuddling, fun and loving. Reply Perceptions Drawer 58201. (31)

Edmonton GWM 38, 5'10" 160 lbs, easy going, fit bottom with varied interests, looking for a romantic, caring, taller top, any age, who enjoys passion, closeness and a healthy sex drive as much as I do, for short or long term. Reply to Drawer # A1305. (31)

38 yr old health care professional looking for that special person for friendship & possibly relationship. I'm down to earth, loyal & have a bizarre sense of humour. Looking for that special person to spend quality time with. Perceptions Drawer 57701. (30)

GWM, 28, 6', 165lb, dark hair, blue eyes, looking for males 30 - 45 for friendship, possible relationship. If you enjoy movies & long walks, good communication & are adventurous reply to Pascap Drawer 57601. (30)

Mature & experienced top in Saskatoon looking for bottoms for fun adventures and possible LTR. I enjoy soft/cuddly sex, fun/kinky times, role playing, & helping people explore fantasies. Ability to communicate openly a [illegible] (31)

I'm 28, 168#, searching for boys/men for pen pals, friendship, exchanging video, pics, magazines & anything more. Your age, look & nationality is not an [illegible] Write me at: KW "Spirit", Postlagernd, PA 1134 Vienna, Austria.

WGM, early 30's looking for other genuine WGMs for possible relationship. I am a MS, social drinker & enjoy lots of great bottom sex. I am into drag & quite attractive when performing. Also like viewing home erotica movies & cottage life. Can entertain at my Regina residence if desired. Reply Perceptions Drawer 57201. (31)

Are you a rancher? Need someone to cook, housekeep, take care of yard or have a 2nd house and need someone to live in and care for it and you? I will exchange for board and room or rent and utilities. GWM, 52. Call Ollie at 306-771-6694 (31)

Saskatoon gay white male, mid 30's, 5'8", 150 lbs, looking to connect with guy(s) mid 30's and over for clean healthy uninhibited fun. Reply Perceptions Drawer 58106. (31)

Emmanuel, 28, 5'9", 150#, black, enjoys video, music, sports, visits, movies, etc, looking for a gay guy to fulfill his fantasies, looking for a caring & compassionate guy for a sweet lasting relationship. PO Box MS.5, New Ashimmia-Accra, GHANA, WA or email: akuwi06@yahoo.com.

FREE ADS!
MAKE NEW FRIENDS
Send us your personal classified ad by April 15 2002 & the first 25 words are free. $6.00 for each additional 25 words. $3.00 for a Drawer #
SEND YOUR AD TODAY!